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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 31 2023
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VELANTA MONIQUE BABBITT, in her individual capacity and as parent and guardian of B. D., a minor,
Plaintiff-Appellee,

v.

DIGNITY HEALTH, a California corporation,
Defendant-Appellee,

v.

SEBHAT AFEWORK, M.D.,
Defendant-Appellant,

v.

UNITED STATES OF AMERICA,
Movant-Appellee.

No. 18-56576

D.C. No. 2:18-cv-06528-DMG-FFM
Central District of California, Los Angeles

ORDER

Before: KLEINFELD, NGUYEN, and BADE, Circuit Judges.

The memorandum disposition filed August 10, 2020, is withdrawn and replaced with the disposition filed concurrently with this order.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VELANTA MONIQUE BABBITT, in her individual capacity and as parent and guardian of B. D., a minor,
Plaintiff-Appellee,

v.

DIGNITY HEALTH, a California corporation,
Defendant-Appellee,

v.

SEBHAT AFEWORK, M.D.,
Defendant-Appellant,

v.

UNITED STATES OF AMERICA,
Movant-Appellee.

No. 18-56576

D.C. No. 2:18-cv-06528-DMG-FFM

MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Argued and Submitted March 6, 2020
Submission Withdrawn September 2, 2021
Resubmitted January 31, 2023
Pasadena, California

Before: KLEINFELD, NGUYEN, and BADE, Circuit Judges.[**]

We decided this case previously, holding that we lacked jurisdiction to review the district court order remanding it to state court. *See K.C. v. Khalifa*, 816 F. App'x. 111 (9th Cir. 2020). We held the mandate and withdrew the case from submission pending the Supreme Court's decision in *BP P.L.C. v. Mayor and City Counsel of Baltimore*, 141 S. Ct. 1532 (2021), and its ruling on Afework's petition for certiorari, *Afework*

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The original panel, consisting of Judge Kleinfeld, Judge Nguyen, and Judge Pauley, heard oral argument on March 6, 2020. Judge Pauley died on July 6, after our earlier decision, but before we withdrew the case from submission, and Judge Bade was drawn to replace him. She has read the briefs, reviewed the record, and watched the oral argument.

v. Babbitt, 141 S. Ct. 2754 (2021). After the Court decided *BP*, and denied Afework's petition for certiorari, we ordered supplemental briefing. Now, with the benefit of the *BP* decision and the parties' supplemental briefing, we decide the case again. Our conclusion is that the outcome is not changed.

This case was filed in state court and removed to federal court. The district court ordered it remanded to state court.[1] Ordinarily, remands are unreviewable under 28 U.S.C. § 1447(d), but there is a statutory exception to that limitation if the case was removed under 28 U.S.C. § 1442 (federal officer removal). Afework removed the case under that section and also 42 U.S.C. § 233 (public health service officers, and employees and persons deemed to be public health service employees under 42 U.S.C. § 233(g)(1)). In *BP*, the Court held that if a case is removed under § 1442, and later remanded, we have jurisdiction to review the entire remand order, not just the portion of the order addressing § 1442. 141 S. Ct. at 1538. And, it explained, rather than construing the § 1447 exception to nonreviewability narrowly, as some courts had held, the statute should be given a "fair reading." *Id.* at 1538 (internal quotations omitted).

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[1] Previously, there were other defendants from a consolidated case on this appeal, including Dr. Khalifa, but a state court dismissed the claims against Khalifa with prejudice and the other claims in the consolidated case were settled, so only Dr. Afework's attempt at removal remains on this appeal. *K.C. v. Khalifa*, 857 F. App'x. 958, 958-59 (9th Cir. 2021).

The district court held that the § 1442 removal was late. A notice of removal must, under 28 U.S.C. § 1446, be filed within 30 days of receipt by the defendant of service or receipt of a copy of the complaint. 28 U.S.C. § 1446(b). The date of service or receipt was contested. Afework declared that he was never served, and learned of the case from a letter to him by co-defendant Dignity Health on July 27, 2018. The plaintiff, Babbitt, provided a proof of service stating that Afework was served March 26, 2018. That was more than 30 days before the July 27 removal. The district court found that service was in fact accomplished March 26, and we cannot conclude that this finding is clearly erroneous. *See S.E.C. v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007) ("[T]he district court's factual findings regarding jurisdiction are reviewed for clear error.") (quotation marks and citation omitted)). Accordingly, the removal, insofar as it was based on § 1442, was too late, as the district court concluded.

As for the § 233 removal, the statute provides that the Attorney General must appear in the state court where the action was filed within 15 days of being notified of the filing and advise the court whether the individual or entity has been deemed to be a public health service employee. § 233(l)(1). If the Attorney General fails to appear, the entity or individual may remove the action. § 233(l)(2). Afework removed the case eleven days after giving notice of it to the Attorney General. The district court accordingly remanded the § 233 removal on the basis that it was too early, denying the Attorney General his 15 days to

appear and advise. It was, so we affirm on this ground as well. Afework presents good arguments for why the timing provisions of § 233 so applied undermine the purpose of the statute, and that the Attorney General did not comply with his obligations under § 233, but we are compelled by the language of the statute to conclude that when he removed the case, the statutory condition precedent "if the Attorney General fails to appear within the time period prescribed" was not met. § 233(l)(2).

AFFIRMED.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
AUG 10 2020
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

K. C., a minor by and through his Guardian ad Litem Dana K. Dunmore,
Plaintiff-Appellee,

v.

AHMAD KHALIFA, M.D.,
Defendant-Appellant,

v.

CALIFORNIA HOSPITAL MEDICAL CENTER; et al.,
Defendants-Appellees,

v.

UNITED STATES OF AMERICA,
Movant-Appellee.

No. 18-56520

D.C. No. 2:18-cv-06619-RGK-AS

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

MEMORANDUM[*]

VELANTA MONIQUE BABBITT, in her individual capacity and as parent and guardian of B. D., a minor,
Plaintiff-Appellee,

v.

DIGNITY HEALTH, a California corporation,
Defendant-Appellee,

v.

SEBHAT AFEWORK, M.D.,
Defendant-Appellant,

v.

UNITED STATES OF AMERICA,
Movant-Appellee.

---

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

No. 18-56576

D.C. No. 2:18-cv-06528-DMG-FFM

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Argued and Submitted March 6, 2020
Pasadena, California

Before: KLEINFELD and NGUYEN, Circuit Judges, and PAULEY,[**] District Judge.

These two cases, consolidated for purposes of oral argument, were removed from state court to federal district court, and then ordered remanded. They are materially similar. Patients sued their physicians, Dr. Khalifa and Dr. Afework, for medical malpractice. Both physicians were employed by Eisner Pediatric & Family Medical Center. The Eisner facility and its employees were "deemed" to be Public Health Service employees pursuant to 42 U.S.C. § 233(g). Section 233 provides for removal from state court to federal court of cases against deemed persons, substitution of the United States for those persons deemed to be Public Health Service employees, and exclusiveness of the remedy against the United States, much like Westfall Act cases. Both physicians sought

[**] The Honorable William H. Pauley III, United States District Judge for the Southern District of New York, sitting by designation.

to avail themselves of section 233, but the district court remanded their cases back to state court. They appeal the remand orders.

Section 233 speaks to removal, but not to appeals from remands. A remand order is generally not reviewable on appeal, under 28 U.S.C. § 1447(d), if the defect in removal fell within section 1447(c) and the case was not removed pursuant to 28 U.S.C. §§ 1442 or 1443. Section 1443 speaks to civil rights actions and has no applicability to the cases before us. Section 1442 provides for removal of actions against federal officers relating to acts performed under color of their federal office. Even assuming the physicians here could qualify as federal officers for purposes of section 1442, both remand orders were proper because the removals were untimely. Dr. Afework's notice of removal, filed on July 27, 2018, was untimely given the proof of service of summons indicating service on March 26, 2018, and Dr. Afework did not prove by a preponderance of the evidence that service occurred on a later date that would have rendered removal timely. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121–22 (9th Cir. 2014). And it is undisputed that Dr. Khalifa was served on April 15, 2018, but did not file his notice of removal until August 1, 2018.

Both cases were also remanded on the ground that the removals were not authorized under section 233. If the agencies and the district court erred in treating the physicians as not being deemed to be Public Health Service employees, we would need appellate jurisdiction to correct the error, but we lack

it under section 1447(d). The district courts' determinations that they were not entitled to removal under section 233 was at least "a ground that is colorably characterized as subject-matter jurisdiction," *Powerex Corp. v. Reliant Energy Services*, 551 U.S. 224, 234 (2007), so it falls within section 1447(c). *See DeMartini v. DeMartini*, 964 F.3d 813, 821 (9th Cir. 2020). Remands of cases removed pursuant to section 233 are therefore unreviewable under section 1447(d).

Accordingly, we affirm the district courts to the extent they held the section 1442 removals were untimely, and we dismiss the remainder of the appeals for lack of jurisdiction under section 1447(d). We do not, because we lack jurisdiction, reach the question whether the district courts were correct to dismiss under section 233. *See DeMartini*, 964 F.3d at 820; *Cty. of San Mateo v. Chevron Corp.*, 960 F.3d 586, 598 (9th Cir. 2020). As such, we are unable to address appellants' arguments.

DISMISSED in part and AFFIRMED in part.

APPENDIX C

United States District Court
Central District of California
Office of the Clerk

[LETTERHEAD WITH SEAL AND ADDRESSES]

[DATE STAMP]
RECEIVED NOV 27 2018

[DATE STAMP]
CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
NOV 27 2018
Sherri R. Carter, Executive Officer/Clerk
By Paul R. Cruz, Deputy

Re: Case Number: 2:18-cv-06528-DMG-FFMX
Previously Superior Court Case No. BC610296
Case Name: Velanta Monique Babbitt et al v. Dignity Health, et al

Dear Sir/Madam:

Pursuant to this Court's ORDER OF REMAND issued on 11/19/2018, the above-referenced case is hereby remanded to your jurisdiction.

Attached is a certified copy of the ORDER OF

REMAND and a copy of the docket sheet from this Court.

Please acknowledge receipt of the above by signing the enclosed copy of this letter and returning it to the location shown below. Thank you for your cooperation.

United States Courthouse
255 East Temple Street, Suite TS-134
Los Angeles, CA 90012

[DATE STAMP]
FILED
CLERK, U.S. DISTRICT COURT
DEC 14 2018
CENTRAL DISTRICT OF CALIFORNIA
BY /s/ DEPUTY

Respectfully,

Clerk, U.S. District Court

By: /s/ Grace Kami
Deputy Clerk
grace_kami@cacd.uscourts.gov

Encls.
cc: Counsel of record

Receipt is acknowledged of the documents described above.

Clerk, Superior Court

11/27/2018	By:	PAUL CRUZ
Date		Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES–GENERAL

JS-6/REMAND

Case No. CV 18-6528-DMG
Date November 19, 2018
Title Velanta Monique Babbitt v. Dignity Health, et al.
Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiff(s) None Present

Attorneys Present for Defendant(s) None Present

Proceedings: **IN CHAMBERS – ORDER RE MOTION TO REMAND ACTION [34], AND MOTION FOR STAY OF PROCEEDINGS AND SUBSTITUTION OF THE UNITED STATES [33]**

On February 16, 2016, Plaintiff Velanta Monique Babbitt, in her individual capacity and as a parent and guardian of B.D., a minor, filed a complaint in Los Angeles County Superior Court alleging medical malpractice against Defendants Dignity Health and Dr. Sebhat Afework. Removal Notice, Ex. 1 [Doc. # 1-1]. On March 27, 2018, Plaintiff filed proofs of

service of summons for each Defendant. [Doc. ## 1-14, 1-15.]

On July 27, 2018, Defendant Afework removed this action pursuant to 28 U.S.C. section 1442 and 42 U.S.C. section 233(l)(2). *See* Removal Notice at 2-4 [Doc. # 1].[1] Afework asserts that removal is timely because he first became aware of the state action via a letter from Dignity that was dated June 27, 2018. *See id.* at 3. Afework alleges that he has absolute immunity from Plaintiff's claims of medical malpractice pursuant to the Federally Supported Health Centers Assistance Act ("FSHCAA") because he acted within the scope of his "deemed" federal employment at all times relevant to Plaintiff's claims. *See id.* at ¶¶ 4-5, 15.

On August 24, 2018, the United States ("the Government") filed a Motion to Remand ("MTR") on the ground that removal under both 28 U.S.C. section 1442 and 42 U.S.C. section 233(l)(2) was procedurally improper. [Doc. # 34]. On the same day, Defendant Afework filed a Motion for Stay of the Proceedings and Substitution of the United States as a Defendant. [Doc. # 33.] Both motions have since been fully briefed. [Doc. ## 39, 40, 41, 42, 47, 48.] Having duly considered the parties' written submissions, the Court **GRANTS** the Government's MTR and **DENIES as moot** Defendant Afework's Motion for Stay and Substitution.

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[1] All page references herein are to page numbers inserted by the CM/ECF system.

I.
LEGAL STANDARD

"A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal . . . ." 28 U.S.C. § 1447(c). One such defect is the failure to file a notice of removal "within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based...." *See id.* § 1446(b)(1). Under that statute, "[e]ach defendant . . . ha[s] 30 days after receipt by or service on that defendant of the initial pleading or summons ... to file the notice of removal." *See id.* § 1446(b)(2)(B)."[I]f the complaint is filed in court prior to any service, the removal period [under the statute] runs from the service of the summons." *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999).

"[A] party seeking to remove a case to federal court has the burden of proving that all the requirements of removal have been met. That burden goes not only to the issue of federal jurisdiction, but also to questions of compliance with statutes governing the exercise of the right of removal. *See Parker v. Brown*, 570 F. Supp. 640, 642 (S.D. Ohio 1983); *accord Riggs v. Plaid Pantries, Inc.*, 233 F. Supp. 2d 1260, 1264 (D. Or. 2001). If only written materials are submitted for the district court's consideration, then the removing defendant need only establish a prima facie case to survive a motion to remand. *See Parker*,

570 F. Supp. at 642-43; *cf. Leite v. Crane Co.*, 749 F.3d 1117, 1121-22 (9th Cir. 2014) (a motion to remand for lack of subject matter jurisdiction is governed by Rule 12(b)(1) standards); *ActiveVideo Networks, Inc. v. Trans Video Elecs., Ltd.*, 975 F. Supp. 2d 1083, 1085-86 (N.D. Cal. 2013) ("When a factual [Rule 12(b)(1)] motion to dismiss is made and only written materials are submitted for the court's consideration, a plaintiff need only establish a *prima facie* case of jurisdiction"). Furthermore, "the question whether service of process was sufficient [in a case that was removed from state court] is governed by state law." *See Whidbee v. Pierce Cty.*, 857 F.3d 1019, 1023 (9th Cir. 2017).

II.
DISCUSSION

As discussed below, the Court concludes that Afework has not shown that he properly removed this case under either 28 U.S.C. section 1442 or 42 U.S.C. section 233(l)(2). Removal Notice at 1 [Doc. # 1].

A. Removal Under 28 U.S.C. § 1442

On March 27, 2018, Plaintiff filed a signed proof of service in state court, which indicates that Shiran Moretsqi personally delivered the summons, complaint, and other case-related documents to Afework at 6:55 p.m. on March 26, 2018 at 11343 Abana Street in Cerritos, California. Removal Notice, Ex. 6 at 1-2 [Doc. #1-15]. If Plaintiff served Afework with a copy of the complaint and summons on March 26, 2018 as the proof of service claims, then Afework's

removal of the case under Section 1442 was untimely because he did not file the Removal Notice until well after April 25, 2018. *See* 28 U.S.C. § 1446(b). Afework nonetheless insists that he first learned of the complaint via the June 27, 2018 letter mentioned *supra*, and that he promptly retained counsel and removed the action within 30 days of receiving that letter. *See* Opp'n re MTR at 21-22

"The filing of a proof of service creates a rebuttal presumption that the service was proper. However, the presumption arises only if the proof of service complies with the applicable statutory requirements."[2] *Floveyor Int'l Ltd. v. Superior Court of L.A. Cty.*, 59 Cal. App. 4th 789, 795 (1997) (citing *Dill v. Berquist Constr. Co.*, 24 Cal. App. 4th 1426, 1441-42 (1994)). The applicable statute in this case is California Code of Civil Procedure section 415.10, which governs service via personal delivery. *See* Cal. Civ. Proc. Code § 415.10 Proof of personal service must comply with California Code of Civil Procedure section 417.10, which provides in pertinent part that "proof that a summons was served on a person within this state shall be made:...[i]f served under Section 415.10,... by the affidavit of the person making the service showing the time, place, and manner of service[.]" *See* Cal. Civ. Proc. Code § 417.10(a). The proof of service in the instant case satisfied these requirements. *See* Removal Notice, Ex. 6 at 1-2 [Doc.# 1-15].

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[2] As noted *supra* Part I, the adequacy of service is governed by state law.

Afework fails to rebut the presumption of proper service. Afework attests that he has never been formally served, but sheds no light on where he was at 6:55 p.m. on March 26, 2018. *See* Afework Decl. at ¶¶ 4-5 [Doc. # 39-1]. This conclusory, self-serving, and uncorroborated declaration falls far short of rebutting the presumption of proper service. *See Yolo Cty. Dep't of Child Support Servs. v. Myers*, 248 Cal. App. 4th 42, 47-48 (2016) (affirming a trial court's rejection of a defendant's self-serving declaration that he was not properly served). Furthermore, his attorney's allegation that the person effectuating service may have been biased is not competent evidence that can rebut this presumption.[3] See Resp. to OSC at 3 [Doc. #29]; *Lofton v. Verizon Wireless (VAW) LLC*, 308 F.R.D. 276, 286 (N.D. Cal. 2015) ("[A]ttorney argument is not evidence on which the court can rely."). His Attorney's assertions regarding the precise timing of the filing of the proofs of service (*i.e.*, two years after the action was initiated and following the state court's issuance of an order to show cause for failure to file a proof of service) are undisputed, but they do not establish that the proof of service is invalid. *See* Resp.

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[3] Attached to Afework's Response to the OSC appears to be a printout from the website "FastPeopleSearch[,]" which seems to indicate that the person who effectuated service is in some vague way "[r]elated to" Plaintiff's counsel. *See* Resp. to OSC, Ex. B at 1 [Doc. # 29-2]. This printout likewise fails to rebut the presumption of valid service because Afework failed to: properly authenticate this document, *see* Fed. R. Evid. 901, describe how "FastPeopleSearch" obtains such information, or acknowledge the obvious alternative explanation that the server is merely the Plaintiff's employee and not his relative.

to OSC at 3 [Doc. # 29]. Accordingly, removal under 28 U.S.C. section 1442 was untimely.[4]

B. Removal Under 42 U.S.C. § 233(l)(2)

Title 42 U.S.C. section 233(l)(2) provides in pertinent part that, "[i]f the Attorney General fails to appear in State court within the time period prescribed under [section 233(l)(1)], upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court." 42 U.S.C. § 233(l)(2). In turn, Section 233(l)(1) requires the Attorney General to "make an appearance" in the state court and "advise such court as to whether the Secretary [of the Department of Health and Human Services ('HHS')] has determined... that [an] entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service" within "15 days after being notified" of that civil action. *See id*. § 233(l)(1).

Afework concedes that his attorney provided a copy of the complaint to HHS on July 16, 2018, *see* Opp'n re MTR at 21, and that he filed the Removal Notice eleven days later– *i.e.*, on July 27, 2018, Removal Notice at 1 [Doc. # 1]. Under the plain text of Section 233(l)(2), removal was improper because the

[4] Because Afework's Removal Notice was untimely, the Court need not address whether Afework is a federal employee for the purposes of Section 1442.

Attorney General did not "fail to appear" within "15 days after being notified" of the state court action. *See* 42 U.S.C. § 233(l)(1)-(2); *see also Allen v. Christenberry,* 327 F.3d 1290, 1294-95 (11th Cir. 2003) (concluding that removal was procedurally improper because defendants did not comply with Section 233 (l)(2)'s 15-day rule). Afework nonetheless claims that the purported underlying purposes of the statute (*e.g.*, to ensure that certain defendants have access to federal court) and its legislative history demonstrate that Congress did not intend for the 15-day period to "operate as a bar on removals..." *See* Opp'n re MTR at 12-19. Yet, Section 233(l)(2) unambiguously provides that, "*[i]f* the Attorney General fails to appear in State court within the time period prescribed under paragraph (1),... the civil action or proceeding shall be removed..." *See* 42 U.S.C. § 233(l)(2) (emphasis added). Accordingly, Afework's policy arguments and resort to legislative history are inapposite.[5] *See Avendano-Ramirez v. Ashcroft,* 365 F.3d 813, 816 (9th Cir. 2004) ("Canons of statutory construction dictate that if the language of the statute is clear, we look no further than that language in determining the statute's meaning. Therefore, we look[] to legislative history

[5] Afework also argues that the Government cannot cut off his right to remove the case under Section 233(l)(2) by merely appearing in state court. *See* Opp'n re MTR at 12-18. Specifically, he argues that such a holding would insulate from judicial review the Government's decision not to certify that a defendant acted within the scope of employment for the purposes of the FSHCAA. *See id.* Since Afework removed the action before the Government's 15-day window for appearing had elapsed, however, the Court need not reach that issue.

only if the statute is unclear." (alteration in original) (quoting *Ore. Nat. Res. Council, Inc. v. Kantor*, 99 F.3d 334, 339 (9th Cir. 1996)).

Afework further contends that he had to remove the action before the expiration of the 15-day period in order to avoid the risk of a default being entered against him in state court. *See* Opp'n re MTR at 17. The text of Section 233(l)(2) does not contain any such exception to the 15-day rule. *See* 42 U.S.C. § 233(l)(2). Furthermore, this argument is belied by the evidence in the record, as the Court has already found that Afework was served on March 26, 2018 –*i.e.*, long before he notified HHS of the suit. *See supra* Part II.A. Additionally, he does not explain why he failed to simply file an answer in the state court proceedings, wherein he presumably could have preserved his defense that the Government should be substituted in his place. *See* Opp'n re MTR at 17.

Afework also claims that even if violating the 15-day rule rendered removal improper, that error was harmless and therefore excusable under Federal Rule of Civil Procedure 61 because the15-day period ultimately elapsed without the Government making any appearance in the state court proceedings. *See* Opp'n re MTR at 17-18. Afework cites virtually no authority for the truly remarkable proposition that Rule 61 can excuse defects in a statutorily-mandated removal procedure. Further, Afework has not discharged his burden of showing that he could have filed a proper notice of removal after the 15-day period elapsed. *See Parker*, 570 F. Supp. at 642 ("It is clear

that a party seeking to remove a case to federal court has the burden of proving that all the requirements of removal have been met."). Even courts holding that Section 1446(b)'s 30-day limit does not apply to removals under Section 233(l)(2) have acknowledged the possibility that laches may bar such removals. *See Estate of Booker v. Greater Phila. Health Action, Inc.*, 10 F. Supp. 3d 656-66 (E.D. Pa. 2014). Afework does not explain why laches would not apply here, even though he failed to remove the action until four months after he was served. *See id.* (observing that laches in this context concerns whether the defendant "delayed unreasonably in filing a notice of removal"). Accordingly, the Court will remand this matter to state court.

III.
CONCLUSION

In light of the foregoing, the Court **GRANTS** the Government's MTR and **DENIES as moot** Defendant Afework's Motion for Stay and Substitution. The Court **REMANDS** this action to the Los Angeles County Superior Court.

IT IS SO ORDERED.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
APR 5 2023
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VELANTA MONIQUE BABBITT, in her individual capacity and as parent and guardian of B. D., a minor,
Plaintiff-Appellee,

v.

DIGNITY HEALTH, a California corporation,
Defendant-Appellee,

v.

SEBHAT AFEWORK, M.D.,
Defendant-Appellant,

v.

UNITED STATES OF AMERICA,
Movant-Appellee.

No. 18-56576

D.C. No. 2:18-cv-06528-DMG-FFM
Central District of California, Los Angeles

ORDER

Before: KLEINFELD, NGUYEN, and BADE, Circuit Judges.

The petition for panel rehearing is DENIED.

APPENDIX E

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 6A. Public Health Service (Refs 8: Annos)
Subchapter I. Administration and Miscellaneous Provisions (Refs & Annos)
Part A. Administration (Refs & Annos)

42 U.S.C.A. § 233
§ 233. Civil actions or proceedings against commissioned officers or employees
Effective: September 30, 2022
Currentness

(a) Exclusiveness of remedy

The remedy against the United States provided by sections 1346(b) and 2672 of Title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of Title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of pleading and process to United States attorney, Attorney General, and Secretary

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attomey for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal to United States district court; procedure; proceeding upon removal deemed a tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a

State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28 and all references thereto. Should a United States district court detennine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claim by Attorney General

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of Title 28 and with the same effect.

(e) Assault or battery

For purposes of this section, the provisions of section 2680(h) of Title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of Title 28, for such damage or injury.

(g) Exclusivity of remedy against United States for entities deemed Public Health Service employees; coverage for services furnished to individuals other than center patients; application process; subrogation of medical

malpractice claims; applicable period; entity and contractor defined

(1)

(A) For purposes of this section and subject to the approval by the Secretary of an application under subparagraph (D), an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a).

(B) The deeming of any entity or officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section shall apply with respect to services provided–

(i) to all patients of the entity, and

(ii) subject to subparagraph (c), to individuals who are not patients of the entity.

(C) Subparagraph (B)(ii) applies to services provided to individuals who are not patients of an entity if the Secretary determines, after reviewing an application submitted under subparagraph (D), that the provision of the services to such individuals–

(i) benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by such entity;

(ii) facilitates the provision of services to patients of the entity; or

(iii) are otherwise required under an employment contract (or similar arrangement) between the entity and an officer, governing board member, employee, or contractor of the entity.

(D) The Secretary may not under subparagraph (A) deem an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such deeming to services described in subparagraph (B)(ii), unless the entity has submitted an application for such deeming to the Secretary in such form and such manner as the Secretary shall prescribe. The application shall contain detailed information, along with supporting documentation, to verify that the entity, and the

officer, governing board member, employee, or contractor of the entity, as the case may be, meets the requirements of subparagraphs (B) and (c) of this paragraph and that the entity meets the requirements of paragraphs (1) through (4) of subsection (h).

(E) The Secretary shall make a determination of whether an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section within 30 days after the receipt of an application under subparagraph (D). The determination of the Secretary that an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section shall apply for the period specified by the Secretary under subparagraph (A).

(F) Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding. Except as provided in subsection (I), the Secretary and the Attorney General may not determine that the provision of services which are the subject of such a determination are not covered under this section.

(G) In the case of an entity described in paragraph (4) that has not submitted an application under

subparagraph (D):

> **(i)** The Secretary may not consider the entity in making estimates under subsection (k)(1).
>
> **(ii)** This section does not affect any authority of the entity to purchase medical malpractice liability insurance coverage with Federal funds provided to the entity under section 254b, 254b, or 256a[1] of this title.

(H) In the case of an entity described in paragraph (4) for which an application under subparagraph (D) is in effect, the entity may, through notifying the Secretary in writing, elect to terminate the applicability of this subsection to the entity. With respect to such election by the entity:

> **(i)** The election is effective upon the expiration of the 30-day period beginning on the date on which the entity submits such notification.
>
> **(ii)** Upon taking effect, the election terminates the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity.
>
> **(iii)** Upon the effective date for the election, clauses (I) and (ii) of subparagraph (G) apply to the entity to the same extent and in the same

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[1] Repealed by Pub.L. 104-299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

manner as such clauses apply to an entity that has not submitted an application under subparagraph (D).

(iv) If after making the election the entity submits an application under subparagraph (D), the election does not preclude the Secretary from approving the application (and thereby restoring the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity, subject to the provisions of this subsection and the subsequent provisions of this section).

(2) If, with respect to an entity or person deemed to he an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993.

(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under section 254b of this title.

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if–

(A) the individual normally performs on average at least 32 ½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs an average of less than 32 ½ hours of services per week for the entity for the period of the contract, the individual is a licensed or certified provider of services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics and gynecology.

(h) Qualifications for designation as Public Health Service employee

The Secretary may not approve an application under subsection (g)(1)(D) unless the Secretary determines that the entity–

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed

against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) will fully cooperate with the Attorney General in providing information relating to an estimate described under subsection (k).

(i) Authority of Attorney General to exclude health care professionals from coverage

(1) Notwithstanding subsection (g)(1), the Attorney General, in consultation with the Secretary, may on the record determine, after notice and opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual–

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1);

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

(D) provided false information relevant to the individuals performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this chapter; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

(j) Remedy for denial of hospital admitting privileges to certain health care providers

In the case of a health care provider who is an officer, employee, or contractor of an entity described in

subsection (g)(4), section 254h(e) of this title shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

(k) Estimate of annual claims by Attorney General; criteria; establishment of fund; transfer of funds to Treasury accounts

(1)

(A) For each fiscal year, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of Title 28 from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities.

(B) The estimate under subparagraph (A) shall take into account–

> **(i)** the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) or by officers, employees, or contractors (subject to subsection

(g)(5)) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of Title 28, and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each fiscal year, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g), but not to exceed a total of $10,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254b and 256a[1] of this title.

(3) In order for payments to be made for judgments against the United States (together with related fees

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[1] Repealed by Pub.L. 104-299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) and of officers, governing board members, employees, or contractors (subject to subsection (g)(5)) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

(l) Timely response to filing of action or proceeding

(1) If a civil action or proceeding is filed in a State court against any entity described in subsection (g)(4) or any officer, governing board member, employee, or any contractor of such an entity for damages described in subsection (a), the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h), that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding. Such advice shall be deemed to satisfy the provisions of subsection (c) that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility.

(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court. The civil action or proceeding shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages described in subsection (a) and issues an order consistent with such determination.

(m) Application of coverage to managed care plans

(1) An entity or officer, governing board member, employee, or contractor of an entity described in subsection (g)(1) shall, for purposes of this section, be deemed to be an employee of the Public Health Sen/ice with respect to services provided to individuals who are enrollees of a managed care plan if the entity contracts with such managed care plan for the provision of services.

(2) Each managed care plan which enters into a contract with an entity described in subsection (g)(4) shall deem the entity and any officer, governing board member, employee, or contractor of the entity as meeting whatever malpractice coverage requirements such plan may require of contracting providers for a calendar year if such entity or officer, governing board member, employee, or contractor of the entity has been

deemed to be an employee of the Public Health Service for purposes of this section for such calendar year. Any plan which is found by the Secretary on the record, after notice and an opportunity for a full and fair hearing, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to he eligible to receive any Federal funds under titles XVIII or XIX of the Social Security Act.

(3) For purposes of this subsection, the term "managed care plan" shall mean health maintenance organizations and similar entities that contract at-risk with payors for the provision of health services or plan enrollees and which contract with providers (such as entities described in subsection (g)(4)) for the delivery of such services to plan enrollees.

(n) Report on risk exposure of covered entities

(1) Not later than one year after December 26, 1995, the Comptroller General of the United States shall submit to the Congress a report on the following:

> **(A)** The medical malpractice liability claims experience of entities that have been deemed to be employees for purposes of this section.
>
> **(B)** The risk exposure of such entities.
>
> **(C)** The value of private sector risk-management services, and the value of risk-management services and procedures required as a condition of

receiving a grant under section 254b, 254b, or 256a of this title.

(D) A comparison of the costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to this section, taking into account–

(i) a comparison of the costs of premiums paid by such entities for private medical malpractice liability insurance with the cost of coverage pursuant to this section; and

(ii) an analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of such entities.

(2) The report under paragraph (1) shall include the following:

(A) A comparison of–

(i) an estimate of the aggregate amounts that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) would have directly or indirectly paid in premiums to obtain medical malpractice liability insurance coverage if this section were not in effect; with

(ii) the aggregate amounts by which the grants received by such entities under this chapter were reduced pursuant to subsection (k)(2).

(B) A comparison of–

(i) an estimate of the amount of privately offered such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) purchased during the three-year period beginning on January 1, 1993; with

(ii) an estimate of the amount of such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) will purchase after December 26, 1995.

(C) An estimate of the medical malpractice liability loss history of such entities for the 10-year period preceding October 1, 1996, including but not limited to the following:

(i) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims mat have been paid and that are estimated to be paid, by the Federal Government pursuant to deeming entities as employees for purposes of this section.

(ii) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by private medical malpractice liability insurance.

(D) An analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of entities that have been deemed as employees for purposes of this section.

(3) In preparing the report under paragraph (1), the Comptroller General of the United States shall consult with public and private entities with expertise on the matters with which the report is concerned.

(o) Volunteer services provided by health professionals at free clinics

(1) For purposes of this section, a free clinic health professional shall in providing a qualifying health service to an individual, or an officer, governing board member, employee, or contractor of a free clinic shall in providing services for the free clinic, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (6)(D). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this

subsection be considered to be a free clinic health professional if the following conditions are met:

(A) The service is provided to the individual at a free clinic, or through offsite programs or events carried out by the free clinic.

(B) The free clinic is sponsoring the health care practitioner pursuant to paragraph (5)(c).

(C) The service is a qualifying health service (as defined in paragraph (4)).

(D) Neither the health care practitioner nor the free clinic receives any compensation for the service from the individual or from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program). With respect to compliance with such condition:

(i) The health care practitioner may receive repayment from the free clinic for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(ii) The free clinic may accept voluntary donations for the provision of the service by the health care practitioner to the individual.

(E) Before the service is provided, the health care practitioner or the free clinic provides written

notice to the individual of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection (or in the case of an emergency, the written notice is provided to the individual as soon after the emergency as is practicable). If the individual is a minor or is otherwise legally incompetent, the condition under this subparagraph is that the written notice be provided to a legal guardian or other person with legal responsibility for the care of the individual.

(F) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

(3)

(A) For purposes of this subsection, the term "free clinic" means a health care facility operated by a nonprofit private entity meeting the following requirements:

(i) The entity does not, in providing health services through the facility, accept reimbursement from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program).

(ii) The entity, in providing health services through the facility, either does not impose charges on the individuals to whom the services

are provided, or imposes a charge according to the ability of the individual involved to pay the charge.

(iii) The entity is licensed or certified in accordance with applicable law regarding the provision of health services.

(B) With respect to compliance with the conditions under subparagraph (A), the entity involved may accept voluntary donations for the provision of services.

(4) For purposes of this subsection, the term "qualifying health service" means any medical assistance required or authorized to be provided in the program under title XIX of the Social Security Act, without regard to whether the medical assistance is included in the plan submitted under such program by the State in which the health care practitioner involved provides the medical assistance. References in the preceding sentence to such program shall as applicable be considered to be references to any successor to such program.

(5) Subsection (g) (other than paragraphs (3) through (5)) and subsections (h), (i), and (l) apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (6) and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(B) This subsection may not be construed as deeming any free clinic to be an employee of the Public Health Service for purposes of this section.

(C) With respect to a free clinic, a health care practitioner is not a free clinic health professional unless the free clinic sponsors the health care practitioner. For purposes of this subsection, the free clinic shall be considered to be sponsoring the health care practitioner if–

> **(i)** with respect to the health care practitioner, the free clinic submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and
>
> **(ii)** the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(D) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a free clinic health professional, this subsection applies to the health care practitioner (with respect to the free clinic sponsoring the health care practitioner pursuant to subparagraph (C)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on

which the Secretary makes such determination.

(E) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(6)

(A) For purposes of making payments for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of free clinic health professionals, there is authorized to be appropriated $10,000,000 for each fiscal year.

(B) The Secretary shall establish a fund for purposes of this subsection. Each fiscal year amounts appropriated under subparagraph (A) shall be deposited in such fund.

(C) Not later than May 1 of each fiscal year, the Attorney General, in consultation With the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of free clinic health professionals, will be paid pursuant to this section during the calendar year that begins in the following fiscal year. Subsection (k)(1)(B) applies to the estimate under the preceding sentence regarding free clinic health professionals to the same extent and in the same

manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(D) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subparagraph (B) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (C) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(7)

(A) This subsection takes effect on the date of the enactment of the first appropriations Act that makes an appropriation under paragraph (6)(A), except as provided in subparagraph (B)(I).

(B)

(i) Effective on August 21, 1996–

> **(I)** the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (5)(C); and
>
> **(II)** reports under paragraph (6)(C) may be submitted to the Congress.

(ii) For the first fiscal year for which an appropriation

is made under subparagraph (A) of paragraph (6), if an estimate under subparagraph (c) of such paragraph has not been made for the calendar year beginning in such fiscal year, the transfer under subparagraph (D) of such paragraph shall be made notwithstanding the lack of the estimate, and the transfer shall be made in an amount equal to the amount of such appropriation.

(p) Administration of smallpox countermeasures by health professionals

(1) In general

For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

(2) Declaration by Secretary concerning countermeasure against smallpox

(A) Authority to issue declaration

(i) In general

The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health

emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

(ii) Covered countermeasure

The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (7)(A)) for purposes of administration to individuals during the effective period of the declaration.

(iii) Effective period

The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

(iv) Publication

The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

(B) Liability of United States only for administrations within scope of

declaration

Except as provided in paragraph (5)(B)(ii), the United States shall he liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if–

(I) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(I), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

(ii)

(I) the individual was within a category of individuals covered by the declaration; or

(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was Within such category.

(C) Presumption of administration within scope of declaration in case of accidental vaccinia inoculation

(i) In general

If vaccinia vaccine is a covered countermeasure specified in a declaration

under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual–

> **(I)** shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and
>
> **(II)** shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

(ii) Circumstances in which presumption applies

The presumption and deeming stated in clause (i) shall apply if–

> **(I)** the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

(II) the individual has resided with, or has had contact with, an individual to whom such vaccine was administered as provided by clauses (I) and (ii) of subparagraph (B) and contracts vaccinia after such date.

(D) Acts and omissions deemed to be within scope of employment

(i) In general

In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual's office or employment for purposes of–

(I) subsection (a); and

(II) section 1346(b) and chapter 171 of Title 28.

(ii) Individuals to whom deeming applies

An individual is described by this clause if–

(I) vaccinia vaccine was administered to such individual as provided by subparagraph (B); and

(II) such individual was within a category of individuals covered by a declaration under subparagraph (A)(I).

(3) Exhaustion; exclusivity; offset

(A) Exhaustion

(i) In general

A person may not bring a claim under this subsection unless such person has exhausted such remedies as are available under part C of this subchapter, except that if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of such part within 240 days after such request was filed, the individual may seek any remedy that may be available under this section.

(ii) Tolling of statute of limitations

The time limit for filing a claim under this subsection, or for filing an action based on such claim, shall be tolled during the pendency of a request for benefits or compensation under part C of this subchapter.

(iii) Construction

This subsection shall not be construed as superseding or otherwise affecting the

application of a requirement, under chapter 171 of Title 28, to exhaust administrative remedies.

(B) Exclusivity

The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses, except for a proceeding under part C of this subchapter.

(C) Offset

The value of all compensation and benefits provided under part C of this subchapter for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.

(4) Certification of action by Attorney General

Subsection (C) applies to actions under this subsection, subject to the following provisions:

(A) Nature of certification

The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a

certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

(B) Certification of Attorney General conclusive

The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

(5) Covered person to cooperate with United States

(A) In general

A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

(B) Consequences of failure to cooperate

Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate–

(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it

appears that the court lacks subject matter jurisdiction;

(ii) the United States shall not be liable based on the acts or omissions of such person; and

(iii) the Attorney General shall not be obligated to defend such action.

(6) Recourse against covered person in case of gross misconduct or contract violation

(A) In general

Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

(B) Venue

The United States may maintain an action under this paragraph against such person in the district

court of the United States in which such person resides or has its principal place of business.

(7) Definitions

As used in this subsection, terms have the following meanings:

(A) Covered countermeasure

The term "covered countermeasure" or "covered countermeasure against smallpox", means a substance that is–

(i)

(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

(II) used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and

(ii) specified in a declaration under paragraph (2).

(B) Covered person

The term "covered person", when used with respect to the administration of a covered countermeasure, means a person who is–

(i) a manufacturer or distributor of such

countermeasure;

(ii) a health care entity under whose auspices–

(I) such countermeasure was administered;

(II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;

(III) the immediate site of administration on the body of a covered countermeasure was monitored, managed, or cared for; or

(IV) an evaluation was made of whether the administration of a countermeasure was effective;

(iii) a qualified person who administered such countermeasure;

(iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, supplied technical or scientific advice or assistance, or otherwise supervised or administered a program with respect to administration of such countermeasures;

(v) in the case of a claim arising out of alleged

transmission of vaccinia from an individual–

(I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i); or

(II) an entity that employs an individual described by clause (1)[2] or where such individual has privileges or is otherwise authorized to provide health care;

(vi) an official, agent, or employee of a person described in clause (i), (ii), (m), or (iv);

(vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or

(viii) an individual who has privileges or is otherwise authorized to provide health care under the auspices of an entity described in clause (ii) or (v)(II).

(C) Qualified person

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[2] So in original. Probably should be "subclause".

The term "qualified person", when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who–

(i) is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered; or

(ii) is otherwise authorized by the Secretary to administer such countermeasure.

(D) Arising out of administration of a covered countermeasure

The term "arising out of administration of a covered countermeasure", when used with respect to a claim or liability, includes a claim or liability arising out of–

(i) determining whether, or under what conditions, an individual should receive a covered countermeasure;

(ii) obtaining informed consent of an individual to the administration of a covered countermeasure;

(iii) monitoring, management, or care of an immediate site of administration on the body of a covered countermeasure, or evaluation of whether the administration of the

countermeasure has been effective; or

(iv) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).

(q) Health professional volunteers at public or non-profit private entities

(1) For purposes of this section, a health professional volunteer at a deemed entity described in subsection (g)(4) shall, in providing a health professional service eligible for funding under section 254b of this title to an individual, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (4)(c). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a health professional volunteer at an entity described in subsection (g)(4) if the following conditions are met:

(A) The service is provided to the individual at the facilities of an entity described in subsection (g)(4), or through offsite programs or events carried out by the entity.

(B) The entity is sponsoring the health care practitioner pursuant to paragraph (3)(B).

(C) The health care practitioner does not receive any compensation for the service from the individual, the entity described in subsection (g)(4), or any third-party payer (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program), except that the health care practitioner may receive repayment from the entity described in subsection (g)(4) for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual, which may include travel expenses to or from the site of services.

(D) Before the service is provided, the health care practitioner or the entity described in subsection (g)(4) posts a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection.

(E) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable Federal and State laws regarding the provision of the service.

(F) At the time the service is provided, the entity described in subsection (g)(4) maintains relevant documentation certifying that the health care practitioner meets the requirements of this subsection.

(3) Subsection (g) (other than paragraphs (3) and (5))

and subsections (h), (i), and (l) apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (4), and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(B) With respect to an entity described in subsection (g)(4), a health care practitioner is not a health professional volunteer at such entity unless the entity sponsors the health care practitioner. For purposes of this subsection, the entity shall be considered to be sponsoring the health care practitioner if–

(i) with respect to the health care practitioner, the entity submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(C) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a health professional volunteer at such entity, this subsection applies to

the health care practitioner (with respect to services performed on behalf of the entity sponsoring the health care practitioner pursuant to subparagraph (B)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(D) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(4)

(A) Amounts in the fund established under subsection (k)(2) shall be available for transfer under subparagraph (C) for purposes of carrying out this subsection.

(B)

(i) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of health professional volunteers, will be paid pursuant to this section during the calendar year that begins in the following fiscal year.

(ii) Subsection (k)(1)(B) applies to the estimate under

clause (1) regarding health professional volunteers to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(iii) The report shall include a summary of the data relied upon for the estimate in clause (i), including the number of claims filed and paid from the previous calendar year.

(C) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subsection (k)(2) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (B) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(5)

(A) This subsection shall take effect on October 1, 2017, except as provided in subparagraph (B).

(B) Effective on December 13, 2016–

(i) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (3)(B); and

(ii) reports under paragraph (4)(B) may be

submitted to Congress.

(6) Repealed. Pub.L. 117-180, Div. D, Title 111, § 301(a), Sept. 30, 2022, 136 Stat. 2136

CREDIT(S)

(July 1, 1944, c. 373, Title II, § 224, formerly § 223, as added Pub.L. 91-623, § 4, Dec. 31, 1970, 84 Stat. 1870; renumbered § 224, Pub.L. 92-157, Title III, § 301(c), Nov. 18, 1971, 85 Stat. 463; amended Pub.L. 102-501, §§ 2 to 4, Oct. 24, 1992, 106 Stat. 3268; Pub.L. 103-183, Title VII, § 706(a), Dec. 14, 1993, 107 Stat. 2241; Pub.L. 104-73, §§ 2 to 5(b), 6 to 11, Dec. 26, 1995, 109 Stat. 777 to 779, 780, 781; Pub.L. 104-191, Title I, § 194, Aug. 21, 1996, 110 Stat. 1988; Pub.L. 104-299, §4(a)(1), Oct. 11, 1996, 110 Stat. 3644; Pub.L. 107-251, Title VI, § 601(3), Oct. 26, 2002, 116 Stat. 1664; Pub.L. 107-296, Title III, § 304(c), Nov. 25, 2002, 116 Stat. 2165; Pub.L. 108-20, § 3(a) to (i), Apr. 30, 2003, 117 Stat. 646, Pub.L. 108-163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023; Pub.L. 111-148, Title X, § 10608(a), Mar. 23, 2010, 124 Stat. 1014; Pub.L. 114-255, Div. B, Title IX, § 9025, Dec. 13, 2016, 130 Stat. 1254; Pub.L. 117-180, Div. D, Title III, § 301, Sept. 30, 2022, 136 Stat. 2136.)

Notes of Decisions (80)

42 U.S.C.A. § 233, 42 USCA § 233
Current through P.L. 118-6. Some statute sections may be more current, see credits for details.

APPENDIX F

42 U.S.C.A. § 254b
§ 254b. Health centers
Effective: December 27, 2020
Currentness

(a) "Health center" defined

(1) In general

For purposes of this section, the term "health center" means an entity that serves a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing, by providing, either through the staff and supporting resources of the center or through contracts or cooperative arrangements–

> **(A)** required primary health services (as defined in subsection (b)(1)); and
>
> **(B)** as may be appropriate for particular centers, additional health services (as defined in subsection (b)(2)) necessary for the adequate support of the primary health services required under subparagraph (A);
>
> for all residents of the area served by the center (hereafter referred to in this section as

the "catchment area").

(2) Limitation

The requirement in paragraph (1) to provide services for all residents within a catchment area shall not apply in the case of a health center receiving a grant only under subsection (g), (h), or (i).

(b) Definitions

For purposes of this section:

(1) Required primary health services

(A) In general

The term "required primary health services" means–

(i) basic health services which, for purposes of this section, shall consist of–

(I) health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and where appropriate, physician assistants, nurse practitioners, and nurse midwives;

(II) diagnostic laboratory and radiologic services;

(III) preventive health services, including–

(aa) prenatal and perinatal services;

(bb) appropriate cancer screening;

(cc) Well-child services;

(dd) immunizations against vaccine-preventable diseases;

(ee) screenings for elevated blood lead levels, communicable diseases, and cholesterol;

(ff) pediatric eye, ear, and dental screenings to determine the need for vision and hearing correction and dental care;

(gg) voluntary family planning services; and

(hh) preventive dental services;

(IV) emergency medical services; and

(V) pharmaceutical services as may be appropriate for particular centers;

(ii) referrals to providers of medical services (including specialty referral when medically

indicated) and other health-related services (including substance use disorder and mental health services);

(iii) patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to Federal, State, and local programs that provide or financially support the provision of medical, social, housing, educational, or other related services;

(iv) services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals); and

(v) education of patients and the general population served by the health center regarding the availability and proper use of health services.

(B) Exception

With respect to a health center that receives a grant only under subsection (g), the Secretary,

upon a showing of good cause, shall–

(i) waive the requirement that the center provide all required primary health services under this paragraph; and

(ii) approve, as appropriate, the provision of certain required primary health services only during certain periods of the year.

(2) Additional health services

The term "additional health services" means services that are not included as required primary health services and that are appropriate to meet the health needs of the population served by the health center involved. Such term may include–

(A) behavioral and mental health and substance use disorder services;

(B) recuperative care services;

(C) environmental health services, including–

(i) the detection and alleviation of unhealthful conditions associated with–

(I) water supply;

(II) chemical and pesticide exposures;

(III) air quality; or

(IV) exposure to lead;

(ii) sewage treatment;

(iii) solid waste disposal;

(iv) rodent and parasitic infestation;

(v) field sanitation;

(vi) housing; and

(vii) other environmental factors related to health; and

(D) in the case of health centers receiving grants under subsection (g), special occupation-related health services for migratory and seasonal agricultural workers, including–

(i) screening for and control of infectious diseases, including parasitic diseases; and

(ii) injury prevention programs, including prevention of exposure to unsafe levels of agricultural chemicals including pesticides.

(3) Medically underserved populations

(A) In general

The term "medically underserved population"

means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.

(B) Criteria

In carrying out subparagraph (A), the Secretary shall prescribe criteria for determining the specific shortages of personal health services of an area or population group. Such criteria shall–

> **(i)** take into account comments received by the Secretary from the chief executive officer of a State and local officials in a State; and
>
> **(ii)** include factors indicative of the health status of a population group or residents of an area, the ability of the residents of an area or of a population group to pay for health services and their accessibility to them, and the availability of health professionals to residents of an area or to a population group.

(C) Limitation

The Secretary may not designate a medically underserved population in a State or terminate the designation of such a population unless

prior to such designation or termination, the Secretary provides reasonable notice and opportunity for comment and consults with–

(i) the chief executive officer of such State;

(ii) local officials in such State; and

(iii) the organization, if any, which represents a majority of health centers in such State.

(D) Permissible designation

The Secretary may designate a medically underserved population that does not meet the criteria established under subparagraph (B) if the chief executive officer of the State in which such population is located and local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to or the availability of personal health services.

(c) Planning grants

(1) Centers

The Secretary may make grants to public and nonprofit private entities for projects to plan and develop health centers which will serve medically underserved populations. A project for which a grant may be made under this subsection may

include the cost of the acquisition and lease of buildings and equipment (including the costs of amortizing the principal of, and paying the interest on, loans) and shall include–

(A) an assessment of the need that the population proposed to be served by the health center for which the project is undertaken has for required primary health services and additional health services;

(B) the design of a health center program for such population based on such assessment;

(C) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project;

(D) initiation and encouragement of continuing community involvement in the development and operation of the project; and

(E) proposed linkages between the center and other appropriate provider entities, such as health departments, local hospitals, and rural health clinics, to provide better coordinated, higher quality, and more cost-effective health care services.

(2) Limitation

Not more than two grants may be made under this

subsection for the same project, except that upon a showing of good cause, the Secretary may make additional grant awards.

(3) Recognition of high poverty

(A) In general

In making grants under this subsection, the Secretary may recognize the unique needs of high poverty areas.

(B) High poverty area defined

For purposes of subparagraph (A), the term "high poverty area" means a catchment area which is established in a manner that is consistent with the factors in subsection (k)(3)(J), and the poverty rate of which is greater than the national average poverty rate as determined by the Bureau of the Census.

(d) Improving quality of care

(1) Supplemental awards

The Secretary may award supplemental grant funds to health centers funded under this section to implement evidence-based models for increasing access to high-quality primary care services, which may include models related to–

(A) improving the delivery of care for

individuals with multiple chronic conditions;

(B) workforce configuration;

(C) reducing the cost of care;

(D) enhancing care coordination;

(E) expanding the use of telehealth and technology-enabled collaborative learning and capacity building models;

(F) care integration, including integration of behavioral health, mental health, or substance use disorder services;

(G) addressing emerging public health or substance use disorder issues to meet the health needs of the population served by the health center; and

(H) improving access to recommended immunizations.

(2) Sustainability

In making supplemental awards under this subsection, the Secretary may consider whether the health center involved has submitted a plan for continuing the activities funded under this subsection after supplemental funding is expended.

(3) Special consideration

The Secretary may give special consideration to applications for supplemental funding under this subsection that seek to address significant barriers to access to care in areas with a greater shortage of health care providers and health services relative to the national average.

(e) Operating grants

(1) Authority

(A) In general

The Secretary may make grants for the costs of the operation of public and nonprofit private health centers that provide health services to medically underserved populations.

(B) Entities that fail to meet certain requirements

The Secretary may make grants, for a period of not to exceed 1 year, for the costs of the operation of public and nonprofit private entities which provide health services to medically underserved populations but with respect to which the Secretary is unable to make each of the determinations required by subsection (k)(3). The Secretary shall not make a grant under this paragraph unless the applicant provides assurances to the Secretary

that within 120 days of receiving grant funding for the operation of the health center, the applicant will submit, for approval by the Secretary, an implementation plan to meet the requirements of subsection (k)(3). The Secretary may extend such 120-day period for achieving compliance upon a demonstration of good cause by the health center.

(C) Operation of networks

The Secretary may make grants to health centers that receive assistance under this section, or at the request of the health centers, directly to a network that is at least majority controlled and, as applicable, at least majority owned by such health centers receiving assistance under this section, for the costs associated with the operation of such network including–

(i) the purchase or lease of equipment, which may include data and information systems (including the costs of amortizing the principal of, and paying the interest on, loans for equipment);

(ii) the provision of training and technical assistance; and

(iii) other activities that–

(I) reduce costs associated with the

provision of health services;

(II) improve access to, and availability of, health services provided to individuals sewed by the centers;

(III) enhance the quality and coordination of health services; or

(IV) improve the health status of communities.

(2) Use of funds

The costs for which a grant may be made under subparagraph (A) or (B) of paragraph (l) may include the costs of acquiring and leasing buildings and equipment (including the costs of amortizing the principal of, and paying interest on, loans), and the costs of providing training related to the provision of required primary health services and additional health services and to the management of health center programs.

(3) Construction

The Secretary may award grants which may be used to pay the costs associated with expanding and modernizing existing buildings or constructing new buildings (including the costs of amortizing the principal of and paying the interest on, loans) for projects approved prior to October 1, 1996.

(4) Limitation

Not more than two grants may be made under subparagraph (B) of paragraph (l) for the same entity.

(5) Amount

(A) In general

The amount of any grant made in any fiscal year under subparagraphs (A) and (B) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of–

(i) State, local, and other operational funding provided to the center; and

(ii) the fees, premiums, and third-party reimbursements, which the center may reasonably be expected to receive for its operations in such fiscal year.

(B) Networks

The total amount of grant funds made available for any fiscal year under paragraph (1)(c) to a health center or to a network shall be determined by the Secretary, but may not exceed 2 percent of the total amount

appropriated under this section for such fiscal year.

(C) Payments

Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments.

(D) Use of nongrant funds

Nongrant funds described in clauses (i) and (ii) of subparagraph (A), including any such funds in excess of those originally expected, shall be used as permitted under this section, and may be used for such other purposes as are not specifically prohibited under this section if such use furthers the objectives of the project.

(6) New access points and expanded services

(A) Approval of new access points

(i) In general

The Secretary may approve applications for grants under subparagraph (A) or (B) of paragraph (1) to establish new delivery sites.

(ii) Special consideration

In carrying out clause (i), the Secretary may give special consideration to applicants that have demonstrated the new delivery site will be located within a sparsely populated area, or an area which has a level of unmet need that is higher relative to other applicants.

(iii) Consideration of applications

In carrying out clause (i), the Secretary shall approve applications for grants in such a manner that the ratio of the medically underserved populations in rural areas which may be expected to use the services provided by the applicants involved to the medically underserved populations in urban areas which may be expected to use the services provided by the applicants is not less than two to three or greater than three to two.

(iv) Service area overlap

If in carrying out clause (i) the applicant proposes to serve an area that is currently served by another health center funded under this section, the Secretary may consider whether the award of funding to an additional health center in the area can be justified based on the unmet need for

additional services within the catchment area.

(B) Approval of expanded service applications

(i) In general

The Secretary may approve applications for grants under subparagraph (A) or (B) of paragraph (1) to expand the capacity of the applicant to provide required primary health services described in subsection (b)(1) or additional health services described in subsection (b)(2).

(ii) Priority expansion projects

In carrying out clause (i), the Secretary may give special consideration to expanded service applications that seek to address emerging public health or behavioral health, mental health, or substance abuse issues through increasing the availability of additional health services described in subsection (b)(2) in an area in which there are significant barriers to accessing care.

(iii) Consideration of applications

In carrying out clause (i), the Secretary shall approve applications for grants in such a manner that the ratio of the

medically underserved populations in rural areas which may be expected to use the services provided by the applicants involved to the medically underserved populations in urban areas which may be expected to use the services provided by such applicants is not less than two to three or greater than three to two.

(f) Infant mortality grants

(1) In general

The Secretary may make grants to health centers for the purpose of assisting such centers in–

(A) providing comprehensive health care and support services for the reduction of–

(i) the incidence of infant mortality; and

(ii) morbidity among children who are less than 3 years of age; and

(B) developing and coordinating service and referral arrangements between health centers and other entities for the health management of pregnant women and children described in subparagraph (A).

(2) Priority

In making grants under this subsection the

Secretary shall give priority to health centers providing services to any medically underserved population among which there is a substantial incidence of infant mortality or among which there is a significant increase in the incidence of infant mortality.

(3) Requirements

The Secretary may make a grant under this subsection only if the health center involved agrees that–

(A) the center will coordinate the provision of services under the grant to each of the recipients of the services;

(B) such services will be continuous for each such recipient;

(C) the center will provide follow-up services for individuals who are referred by the center for services described in paragraph (1);

(D) the grant will be expended to supplement, and not supplant, the expenditures of the center for primary health services (including prenatal care) with respect to the purpose described in this subsection; and

(E) the center will coordinate the provision of services with other maternal and child health providers operating in the catchment area.

(g) Migratory and seasonal agricultural workers

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (t) for the planning and delivery of services to a special medically underserved population comprised of–

(A) migratory agricultural workers, seasonal agricultural workers, and members of the families of such migratory and seasonal agricultural workers who are within a designated catchment area; and

(B) individuals who have previously been migratory agricultural workers but who no longer meet the requirements of subparagraph (A) of paragraph (3) because of age or disability and members of the families of such individuals who are within such catchment area.

(2) Environmental concerns

The Secretary may enter into grants or contracts under this subsection with public and private entities to–

(A) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migratory agricultural Worker and seasonal agricultural

worker labor camps, and applicable Federal and State pesticide control standards; and

(B) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, exposure to unsafe levels of agricultural chemicals including pesticides, and other environmental health hazards to which migratory agricultural workers and seasonal agricultural workers, and members of their families, are exposed.

(3) Definitions

For purposes of this subsection:

(A) Migratory agricultural worker

The term "migratory agricultural worker" means an individual whose principal employment is in agriculture, who has been so employed Within the last 24 months, and who establishes for the purposes of such employment a temporary abode.

(B) Seasonal agricultural worker

The term "seasonal agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(C) Agriculture

The term "agriculture" means farming in all its branches, including–

(i) cultivation and tillage of the soil;

(ii) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land; and

(iii) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in clause (ii).

(h) Homeless population

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f) for the planning and delivery of services to a special medically underserved population comprised of homeless individuals, including grants for innovative programs that provide outreach and comprehensive primary health services to homeless children and youth, children and youth at risk of homelessness, homeless veterans, and

veterans at risk of homelessness.

(2) Required services

In addition to required primary health services (as defined in subsection (b)(1)), an entity that receives a grant under this subsection shall be required to provide substance abuse services as a condition of such grant.

(3) Supplement not supplant requirement

A grant awarded under this subsection shall be expended to supplement, and not supplant, the expenditures of the health center and the value of in kind contributions for the delivery of services to the population described in paragraph (1).

(4) Temporary continued provision of services to certain former homeless individuals

If any grantee under this subsection has provided services described in this section under the grant to a homeless individual, such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than l2 months.

(5) Definitions

For purposes of this section:

(A) Homeless individual

The term "homeless individual" means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing.

(B) Substance use disorder services

The term "substance use disorder services" includes detoxification, risk reduction, outpatient treatment, residential treatment, and rehabilitation for substance abuse provided in settings other than hospitals.

(i) Residents of public housing

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f) for the planning and delivery of services to a special medically underserved population comprised of residents of public housing (such term, for purposes of this subsection, shall have the same meaning given such term in section l437a(b)(1) of

this title) and individuals living in areas immediately accessible to such public housing.

(2) Supplement not supplant

A grant awarded under this subsection shall be expended to supplement, and not supplant, the expenditures of the health center and the value of in kind contributions for the delivery of services to the population described in paragraph (1).

(3) Consultation with residents

The Secretary may not make a grant under paragraph (1) unless, with respect to the residents of the public housing involved, the applicant for the grant–

(A) has consulted with the residents in the preparation of the application for the grant; and

(B) agrees to provide for ongoing consultation with the residents regarding the planning and administration of the program carried out with the grant.

(j) Access grants

(1) In general

The Secretary may award grants to eligible health centers with a substantial number of clients with

limited English speaking proficiency to provide translation, interpretation, and other such services for such clients with limited English speaking proficiency.

(2) Eligible health center

In this subsection, the term "eligible health center" means an entity that–

(A) is a health center as defined under subsection (a);

(B) provides health care services for clients for whom English is a second language; and

(C) has exceptional needs with respect to linguistic access or faces exceptional challenges with respect to linguistic access.

(3) Grant amount

The amount of a grant awarded to a center under this subsection shall be determined by the Administrator. Such determination of such amount shall be based on the number of clients for whom English is a second language that is served by such center, and larger grant amounts shall be awarded to centers sewing larger numbers of such clients.

(4) Use of funds

An eligible health center that receives a grant under this subsection may use funds received through such grant to–

(A) provide translation, interpretation, and other such services for clients for whom English is a second language, including hiring professional translation and interpretation services; and

(B) compensate bilingual or multilingual staff for language assistance services provided by the staff for such clients.

(5) Application

An eligible health center desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including–

(A) an estimate of the number of clients that the center serves for whom English is a second language;

(B) the ratio of the number of clients for whom English is a second language to the total number of clients served by the center;

(C) a description of any language assistance services that the center proposes to provide to aid clients for whom English is a second

language; and

(D) a description of the exceptional needs of such center with respect to linguistic access or a description of the exceptional challenges faced by such center with respect to linguistic access.

(6) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, in addition to any funds authorized to be appropriated or appropriated for health centers under any other subsection of this section, such sums as may be necessary for each of fiscal years 2002 through 2006.

(k) Applications

(1) Submission

No grant may be made under this section unless an application therefore is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe.

(2) Description of unmet need

An application for a grant under subparagraph (A) or (B) of subsection (e)(1) or subsection (e)(6) for a health center shall include–

(A) a description of the unmet need for health services in the catchment area of the center;

(B) a demonstration by the applicant that the area or the population group to be served by the applicant has a shortage of personal health services;

(C) a demonstration that the center will be located so that it will provide services to the greatest number of individuals residing in the catchment area or included in such population group; and

(D) in the case of an application for a grant pursuant to subsection (e)(6), a demonstration that the applicant has consulted with appropriate State and local government agencies, and health care providers regarding the need for the health services to be provided at the proposed delivery site.

Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under subsection (b)(3) or on any other criteria which the Secretary may prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services. In considering an application for a grant under subparagraph (A) or (B) of subsection (e)(1), the Secretary may require as a condition to the approval of such application an assurance that the applicant

will provide any health service defined under paragraphs (1) and (2) of subsection (b) that the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided to the applicant.

(3) Requirements

Except as provided in subsection (e)(1)(B) or subsection (e)(6), the Secretary may not approve an application for a grant under subparagraph (A) or (B) of subsection (e)(1) unless the Secretary determines that the entity for which the application is submitted is a health center (within the meaning of subsection (a)) and that–

(A) the required primary health services of the center will be available and accessible in the catchment area of the center promptly, as appropriate, and in a manner which assures continuity;

(B) the center has made and will continue to make every reasonable effort to establish and maintain collaborative relationships with other health care providers, including other health care providers that provide care within the catchment area, local hospitals, and specialty providers in the catchment area of the center, to provide access to services not available through the health center and to reduce the

non-urgent use of hospital emergency departments;

(C) the center will have an ongoing quality improvement system that includes clinical services and management, and that maintains the confidentiality of patient records;

(D) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(E) the center–

(i)

(I) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan; and

(II) has or will have a contractual or other arrangement with the State agency administering the program under title XXI of such Act (42 U.S.C. l397aa et seq.) with respect to individuals who are State

children's health insurance program beneficiaries; or

(ii) has made or will make every reasonable effort to enter into arrangements described in subclauses (I) and (II) of clause (i);

(F) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(G) the center–

(i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay;

(ii) has made and will continue to make every reasonable effort–

(I) to secure from patients payment for sen/ices in accordance with such schedules; and

(II) to collect reimbursement for health services to persons described in subparagraph (F) on the basis of the full amount of fees and payments for such services without application of any discount;

(iii)

(I) will assure that no patient will be denied health care services due to an individual's inability to pay for such services; and

(II) will assure that any fees or payments required by the center for such services will be reduced or waived to enable the center to fulfill the assurance described in subclause (1); and

(iv) has submitted to the Secretary such reports as the Secretary may require to determine compliance with this subparagraph;

(H) the center has established a governing board which except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act or an urban Indian

organization under the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.)–

(i) is composed of individuals, a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center;

(ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center who shall be directly employed by the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and

(iii) in the case of an application for a second or subsequent grant for a public center, has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

except that, upon a showing of good cause the Secretary shall waive, for the length of the project period, all or part of the requirements of this subparagraph in the case of a health center that

receives a grant pursuant to subsection (g), (h), (i), or (p);

(I) the center has developed–

(i) an overall plan and budget that meets the requirements of the Secretary; and

(ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to–

(I) the costs of its operations;

(II) the patterns of use of its services;

(III) the availability, accessibility, and acceptability of its services; and

(IV) such other matters relating to operations of the applicant as the Secretary may require;

(J) the center will review periodically its catchment area to–

(i) ensure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate;

(ii) ensure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs; and

(iii) ensure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social grouping, and available transportation;

(K) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has–

(i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals; and

(ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural

sensitivities and bridging linguistic and cultural differences;

(L) the center, has developed an ongoing referral relationship with one or more hospitals;

(M) the center encourages persons receiving or seeking health services from the center to participate in any public or private (including employer-offered) health programs or plans for which the persons are eligible, so long as the center, in complying with this subparagraph, does not violate the requirements of subparagraph (G)(iii)(I); and

(N) the center has written policies and procedures in place to ensure the appropriate use of Federal funds in compliance with applicable Federal statutes, regulations, and the terms and conditions of the Federal award.

For purposes of subparagraph (H), the term "public center" means a health center funded (or to be funded) through a grant under this section to a public agency.

(l) Technical assistance

The Secretary shall establish a program through which the Secretary shall provide (either through the Department of Health and Human Services or by grant or contract) technical and other assistance to eligible

entities to assist such entities to meet the requirements of subsection (k)(3). Services provided through the program may include necessary technical and nonfinancial assistance, including fiscal and program management assistance, training in fiscal and program management, operational and administrative support, and the provision of information to the entities of the variety of resources available under this subchapter and how those resources can be best used to meet the health needs of the communities served by the entities. Funds expended to carry out activities under this subsection and operational support activities under subsection (iii) shall not exceed 3 percent of the amount appropriated for this section for the fiscal year involved.

(m) Memorandum of agreement

In carrying out this section, the Secretary may enter into a memorandum of agreement with a State. Such memorandum may include, where appropriate, provisions permitting such State to–

(1) analyze the need for primary health services for medically underserved populations within such State;

(2) assist in the planning and development of new health centers;

(3) review and comment upon annual program plans and budgets of health centers, including

comments upon allocations of health care resources in the State;

(4) assist health centers in the development of clinical practices and fiscal and administrative systems through a technical assistance plan which is responsive to the requests of health centers; and

(5) share information and data relevant to the operation of new and existing health centers.

(n) Records

(1) In general

Each entity which receives a grant under subsection (e) shall establish and maintain such records as the Secretary shall require.

(2) Availability

Each entity which is required to establish and maintain records under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore, The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying,

and reproduction.

(o) Delegation of authority

The Secretary may delegate the authority to administer the programs authorized by this section to any office, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.

(p) Special consideration

In making grants under this section, the Secretary shall give special consideration to the unique needs of sparsely populated rural areas, including giving priority in the awarding of grants for new health centers under subsections (c) and (e), and the granting of waivers as appropriate and permitted under subsections (b)(1)(B)(i) and (k)(3)(G).

(q) Audits

(1) ln general

Each entity which receives a grant under this section shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which

such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate–

> **(A)** the entity's implementation of the guidelines established by the Secretary respecting cost accounting,
>
> **(B)** the processes used by the entity to meet the financial and program reporting requirements of the Secretary, and
>
> **(C)** the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.
>
> A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

(2) Records

Each entity which receives a grant under this section shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and

manner in which such records shall be established and maintained.

(3) Availability of records

Each entity which is required to establish and maintain records or to provide for and[1] audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(4) Waiver

The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection with respect to an entity. A waiver provided by the Secretary under this paragraph may not remain in effect for more than 1 year and may not be extended after such period. An entity may not receive more than one waiver under this paragraph in consecutive years.

---

[1] So in original. Probably should be "an".

(R) Authorization of appropriations

(1) General amounts for grants

For the purpose of carrying out this section, in addition to the amounts authorized to be appropriated under subsection (d), there is authorized to be appropriated the following:

(A) For fiscal year 2010, $2,988,821,592.

(B) For fiscal year 2011, $3,862,107,440.

(C) For fiscal year 2012, $4,990,553,440.

(D) For fiscal year 2013, $6,448,713,307.

(E) For fiscal year 2014, $7,332,924,155.

(F) For fiscal year 2015, $8,332,924,155.

(G) For fiscal year 2016, and each subsequent fiscal year, the amount appropriated for the preceding fiscal year adjusted by the product of–

(i) one plus the average percentage increase in costs incurred per patient served; and

(ii) one plus the average percentage increase in the total number of patients served.

(2) Special provisions

(A) Public centers

The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (k)(3)) the governing boards of which (as described in subsection (k)(3)(H)) do not establish general policies for such centers, an amount which exceeds 5 percent of the amounts appropriated under this section for that fiscal year. For purposes of applying the preceding sentence, the term "public centers" shall not include health centers that receive grants pursuant to subsection (h) or (i).

(B) Distribution of grants

For fiscal year 2002 and each of the following fiscal years, the Secretary, in awarding grants under this section, shall ensure that the proportion of the amount made available under each of subsections (g), (h), and (i), relative to the total amount appropriated to carry out this section for that fiscal year, is equal to the proportion of the amount made available under that subsection for fiscal year 2001, relative to the total amount appropriated to carry out this section for fiscal year 2001.

(3) Funding report

The Secretary shall annually prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Energy and Commerce of the House of Representatives, a report including, at a minimum–

(A) the distribution of funds for carrying out this section that are provided to meet the health care needs of medically underserved populations, including the homeless, residents of public housing, and migratory and seasonal agricultural workers, and the appropriateness of the delivery systems involved in responding to the needs of the particular populations;

(B) an assessment of the relative health care access needs of the targeted populations;

(c) the distribution of awards and funding for new or expanded services in each of rural areas and urban areas;

(D) the distribution of awards and funding for establishing new access points, and the number of new access points created;

(E) the amount of unexpended funding for loan guarantees and loan guarantee authority under subchapter XIV;

(F) the rationale tor any substantial changes in the distribution of funds;

(G) the rate of closures for health centers and access points;

(H) the number and reason for any grants awarded pursuant to subsection (e)(1)(B); and

(I) the number and reason for any waivers provided pursuant to subsection (q)(4).

(4) Rule of construction with respect to rural health clinics

(A) In general

Nothing in this section shall be construed to prevent a community health center from contracting with a Federally certified rural health clinic (as defined in section 1861(aa)(2) of the Social Security Act), a low-volume hospital (as defined for purposes of section 1886 of such Act), a critical access hospital, a sole community hospital (as defined for purposes of section 1886(d)(5)(D)(iii) of such Act), or a medicare-dependent share hospital (as defined for purposes of section 1886(d)(5)(G)(iv) of such Act) for the delivery of primary health care services that are available at the clinic or hospital to individuals who would otherwise be eligible for free or reduced cost care if that individual were able to obtain that care at the community health center. Such services may be limited in scope to those primary health care services available in that

clinic or hospitals.[2]

(B) Assurances

In order for a clinic or hospital to receive funds under this section through a contract with a community health center under subparagraph (A), such clinic or hospital shall establish policies to ensure–

(i) nondiscrimination based on the ability of a patient to pay; and

(ii) the establishment of a sliding fee scale for low-income patients.

(5) Funding for participation of health centers in All of Us Research Program

In addition to any amounts made available pursuant to paragraph (1) of this subsection, section 282a of this title, or section 254b-2 of this title, there is authorized to be appropriated, and there is appropriated, out of any monies in the Treasury not otherwise appropriated, to the Secretary $25,000,000 for fiscal year 2018 to support the participation of health centers in the All of Us Research Program under the Precision Medicine Initiative under section 289g-5 of this title.

---

[2] So in original. Probably should be "hospital.".

(6) Additional amounts for supplemental awards

In addition to any amounts made available pursuant to this subsection, section 282a of this title, or section 254b-2 of this title, there is authorized to be appropriated, and there is appropriated, out of any monies in the Treasury not otherwise appropriated, $1,320,000,000 for fiscal year 2020 for supplemental awards under subsection (d) for the detection of SARS-CoV-2 or the prevention, diagnosis, and treatment of COVID-19.

CREDIT(S)

(July 1, 1944, c. 373, Title III, § 330, as added Pub.L. 104-299, § 2, Oct. 11, 1996, 110 Stat. 3626; amended Pub.L. 107-251, Title I, § 101, Oct. 26, 2002, 116 Stat. 1622; Pub.L. 108-163, § 2(6), Dec. 6, 2003, 117 Stat, 2020; Pub.L. 110-355, § 2(a), (c)(I), Oct. 8, 2008, 122 Stat. 3988, 3992, Pub.L. 111-148, Title IV, § 4206, Title V, § 5601, Mar. 23, 2010, 124 Stat. 576, 677; Pub.L. 115-123, Div. E, Title IX, § 50901(b), Feb. 9, 2018, 132 Stat. 223, Pub.L. 116-136, Div. A, Title III, § 3211(a), Mar, 27, 2020, 134 Stat. 368; Pub.L 116-260, Div. BB, Title III, § 311(c), Dec. 27, 2020, 134 Stat. 2925.)

42 U.S.C.A. § 254b, 42 USCA § 254b
Current through P.L.118-6. Some statute sections may be more current, see credits for details.

APPENDIX G

28 U.S.C.A. § 1442
§ 1442. Federal officers or agencies sued or prosecuted
Effective: January 2, 2013
Currentness

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

> **(1)** The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.
>
> **(2)** A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.
>
> **(3)** Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(c) Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer–

(1) protected an individual in the presence of the officer from a crime of violence;

(2) provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or

(3) prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

(d) In this section, the following definitions apply:

(1) The terms "civil action" and "criminal prosecution" include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.

(2) The term "crime of violence" has the meaning given that term in section 16 of title 18.

(3) The term "law enforcement officer" means any employee described in subparagraph (A), (B), or (c) of section 8401(17) of title 5 and any special agent in the Diplomatic Security Service of the Department of State.

(4) The term "serious bodily injury" has the meaning given that term in section 1365 of title 18.

(5) The term "State" includes the District of Columbia, United States territories and insular possessions, and Indian country (as defined in section 1151 of title 18).

(6) The term "State court" includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and

a tribal court.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 938; Pub.L. 104-317. Title II, § 206(a), Oct. 19, 1996, 110 Stat. 3850; Pub.L. 112-51, § 2(a), (b), Nov. 9, 2011, 125 Stat. 545; Pub.L. 112-239, Div. A, Title X, § 1087, Jan. 2, 2013, 126 Stat. 1969.)

Notes of Decisions (862)

28 U.S.C.A. § 1442, 28 USCA § 1442

Current through P.L. 118-6. Some statute sections may be more current, see credits for details.

APPENDIX H

[DATE STAMP]
CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
AUG 14 2018
Sherri R. Carter, Executive Officer/clerk
By Shaunya Bolden, Deputy

NICOLA T. HANNA
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DAVID M. HARRIS
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Chief, Civil Division
JOANNE S. OSINOFF
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Attorneys for UNITED STATES OF AMERICA

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
COUNTY OF LOS ANGELES

CENTRAL DISTRICT

VELANTA MONIQUE BABBITT, in her individual capacity as a parent and guardian of BREWER DEANGELO, a minor,
Plaintiffs,

v.

DIGNITY HEALTH, a California Corporation, SEBHAT AFEWORK; and Does 1-25, inclusive,
Defendants.

Case No. BC610296

NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1)

Dept. SS4

NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1)

PLEASE TAKE NOTICE that pursuant to 42 U.S.C. § 233(l)(1), the United States Attorney for the Central District of California advises this Court that whether Sebhat Afework is deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. § 233 with respect to the actions or omissions that are the subject of the above captioned action, is under consideration.

Dated: August 14, 2018

Respectfully submitted,
NICOLA T. HANNA
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

/s/
GWENDOLYN M. GAMBLE
Assistant United States Attorney
Attorneys for UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I, Carolina Usi, certify and declare as follows:

1. I am over the age of 18 years and not a party to this action. I am employed by the Office of the United States Attorney, Central District of California, and am familiar with the office practice of collecting and processing documents for mailing with the United States Postal Service. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California, 90012.

2. On August 14, 2018, I served a copy of the foregoing document described as NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1) on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and the place shown below following our ordinary office practice.

3. Date of mailing: August 14, 2018. Place of mailing: Los Angeles, California. Persons or entities to whom mailed:

Elliot N. Tiomkin
Law Offices of Elliot N. Tiomkin
4922 Lindley Avenue
Tarzana, CA 91356

Attorneys for Plaintiffs Velanta Monique Babbitt, in her individual capacity as a parent and guardian of

Brewer Deangelo, a minor

Ted H. O'Leary
Packer, O'Leary & Corson
505 N. Brand Boulevard, Suite 830
Glendale, Ca 91203

Attorneys for Defendant Dignity Health

Law + Brandmeyer LLP
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2 North Lake Avenue, Suite 820
Pasadena, CA 91101

Attorneys for Defendant Dr. Sebhat Afework

Feldesman Tucker Leifer Fidell LLP
Matthew S. Freedus (DC 475887)
1129 20th Street NW, 4th Floor
Washington, DC 20036

Attorneys for Defendant Dr. Sebhat Afework

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 14, 2018 in Los Angeles

/s/
Carolina Usi

APPENDIX I

[DATE STAMP]
CONFORMED COPY
ORIGINAL FILED
Los Angeles Superior Court
SEP 12 2018
Sherri R. Carter, Executive Officer/clerk
By Glorietta Robinson, Deputy

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Attorneys for UNITED STATES OF AMERICA

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
COUNTY OF LOS ANGELES

CENTRAL DISTRICT

VELANTA MONIQUE BABBITT, in her individual capacity as a parent and guardian of BREWER DEANGELO, a minor,
Plaintiffs,

v.

DIGNITY HEALTH, a California Corporation, SEBHAT AFEWORK; and Does 1-25, inclusive,
Defendants.

Case No. BC610296

NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1)

Dept. SS4

AMENDED NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1)

AMENDED NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1)

PLEASE TAKE NOTICE that pursuant to 42 U.S.C. § 233(l)(1) and for the reasons set forth in the September 6, 2018 letters to defendant Sebhat Afework and the General Counsel of Eisner Pediatric and Family Medical Center from the United States Department of Health and Human Services and the

United States Attorney for the Central District of California, which are incorporated herein, the United States Attorney has determined that defendant Afework is not deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. § 233 with respect to the acts or omissions that are the subject of the above captioned action.

Dated: September 12, 2018

Respectfully submitted,

NICOLA T. HANNA
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

/s/
GWENDOLYN M. GAMBLE
Assistant United States Attorney
Attorneys for UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I, Carolina Usi, certify and declare as follows:

1. I am over the age of 18 years and not a party to this action. I am employed by the Office of the United States Attorney, Central District of California, and am familiar with the office practice of collecting and processing documents for mailing with the United States Postal Service. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California, 90012.

2. On September 12, 2018, I served a copy of the foregoing document described as AMENDED NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1) on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and the place shown below following our ordinary office practice.

3. Date of mailing: September 12, 2018. Place of mailing: Los Angeles, California. Persons or entities to whom mailed:

Elliot N. Tiomkin, Esq.
Law Offices of Elliot N. Tiomkin
16133 Ventura Boulevard, Suite 700
Encino, CA 91436

Attorneys for Plaintiffs Velanta Monique Babbitt, in her individual capacity as a parent and guardian of

Brewer Deangelo, a minor

Ted H. O'Leary
Packer, O'Leary & Corson
505 N. Brand Boulevard, Suite 830
Glendale, Ca 91203

Attorneys for Defendant Dignity Health

Law + Brandmeyer LLP
Gregory B. Geer (SBN 316572)
2 North Lake Avenue, Suite 820
Pasadena, CA 91101

Attorneys for Defendant Dr. Sebhat Afework

Feldesman Tucker Leifer Fidell LLP
Matthew S. Freedus (DC 475887)
1129 20th Street NW, 4th Floor
Washington, DC 20036

Attorneys for Defendant Dr. Sebhat Afework

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 2018 in Los Angeles

/s/
Carolina Usi

APPENDIX J

LAW + BRAND MEYER LLP
Gregory B. Geer (SBN 316572)
ggeer@lawbrandmeyer.com
2 North Lake Avenue, Suite 820
Pasadena, CA 91101
(t) (626) 243-4789
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Washington, DC 20036
(t) (202) 466-8960
(f) (202) 293-8103
Attorneys for Defendant Dr. Sebhat Afework

* Applications for admission *pro hac vice* will be promptly filed

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VELANTA MONIQUE BABBITT, in her individual capacity and as parent and guardian of BREWER DEANGELO, a minor.
Plaintiff,

vs.

DIGNITY HEAL TH, a California corporation; SEBHAT AFEWORK; and DOES 1-25, inclusive,

Defendants.

Case No.:

Action Filed (State Court): Feb. 16, 2016

NOTICE OF REMOVAL

TO THE CLERK OF THE UNITED STATE DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1442 and 42 U.S.C. § 233(l)(2) federal defendant Sebhat Afework, M.D., hereby removes to this Court the state court action described below.

1. On February 16, 2016, a medical malpractice action was commenced in the Superior Court of the State of California for the County of Los Angeles, entitled *Velanta Monique Babbitt v. Dignity Health, et al.,* Case No. BC 610296. The complaint alleges that Dr. Afework was negligent during plaintiff's labor and delivery and minor plaintiff's birth on November 14, 2014. A true and accurate copy of Plaintiff's Complaint for Damages for Negligence (Medical Malpractice) is attached hereto as Exhibit 1.

Jurisdiction

2. This Court has original jurisdiction over this removal action under 28 U.S.C. § 1331, 28 U.S.C. § 1442, 28 U.S.C. § 2679(d), and 42 U.S.C. § 233 *et seq.*

Grounds for Removal

42 U.S.C. § 233(l)(2)

3. Removal of this case to this Court is made pursuant to 42 U.S.C. § 233(l)(2), which permits deemed employees of the Public Health Service to remove state court civil actions arising out of the performance of their medical, surgical, dental, or related functions. At all times relevant to this action, Dr. Afework was an employee of Eisner Pediatric and Family Medical Center, a federal grant recipient under the Public Health Service Act ("Section 330 grantee"), 42 U.S.C. § 254b. A true and accurate copy of the Dr. Afework's work status agreement with Eisner Pediatric & Family Medical Center is attached hereto as Exhibit 2.

4. At all times relevant to this action and pursuant to the Federally Supported Health Centers Assistance Act of 1992 and 1995 (FSHCAA), codified at 42 U.S.C. § 233(g)-(n), the Secretary[1] of the U.S. Department of

[1] The Secretary of the U.S. Department of Health and Human Services' authority to deem entities and their officers or employees as Public Health Service employees under 42 U.S.C. § 233(g) has been delegated to the Associate Administrator, Bureau

Health and Human Services (HHS) deemed Eisner Pediatric and Family Medical Center and its officers, directors, and employees, including Dr. Sebhat Afework, to be federal employees of the Public Health Service for purposes of the absolute immunity afforded under 42 U.S.C. § 233(a).

5. Dr. Afework is immune from any civil action or proceeding arising out of his performance of medical or related functions within the scope of his employment by making the remedy against the United States provided by the Federal Tort Claims Act the exclusive remedy for claims brought against Public Health Service employees for conduct committed while acting within the scope of their employee. 42 U.S.C. § 233(a) and (g). A true and accurate copy of the 2014-2018 Notices of Deeming Action are attached hereto as Exhibit 3.

6. At all times relevant to this matter, Dr. Afework was acting within the scope of his deemed federal employment as a licensed obstetrician of Eisner Pediatric and Family Medical Center, performing labor and delivery services for plaintiff, an Eisner patient.

7. The Secretary's favorable Notice of Deeming Action, which confers absolute immunity, is "final and binding" on HHS, the Attorney General, and any party to any civil action or proceeding. 42 U.S.C. § 233(g)(1)(F); *Hui v. Castaneda,* 559 U.S. 799, 806

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of Primary Health Care, Human Resources and Services Administration.

(2010).

8. On or about July 16, 2018, Dr. Afework delivered copies of the complaint against him to the Office of the General Counsel of HHS in accordance with42 U.S.C. § 233(b) and HHS's guidance. HHS was obligated. to promptly furnish copies of the complaint to the local U.S. Attorney, and the local U.S. Attorney was obligated to appear in state court within 15 days thereafter. The Attorney General has not made an appearance in the state court action.

9. Having become aware of the state action after June 27, 2018, Dr. Afework's removal under 42 U.S.C. § 233(l)(2) is necessary to avoid default judgment and protect his federal defense of absolute immunity.

28 U.S.C. § 1442(a)(1)

10. Removal of the case to this Court is also made pursuant to 28 U.S.C. § 1442(a)(1), which provides for the removal of a state court action brought against the United States or any agency thereof or any officer (or any person acting under that officer), sued in an official or individual capacity for any act under color of such office. Removal is timely under 28 U.S.C. § 1446(b), because Dr. Afework became aware of the state action against him after June 27, 2018 *via* a letter dated June 27, 2018 from co-defendant Dignity Health, d/b/a California Hospital Medical Center. A true and accurate copy of the letter from Dignity Health's attorney to Dr. Afework is attached hereto as Exhibit 4.

11. At all relevant times, Dr. Afework was acting under Eisner's federal grantor agency, HHS. Specifically, at the time of the alleged negligence on November 14, 2014, Dr. Afework provided HHS-approved medical and/or surgical services to plaintiff at the California Hospital Medical Center, which was an HHS-approved delivery site within Eisner's HHS-approved federal grant project from March 30, 2007 through September 28, 2015. A true and accurate copy of HRSA-Approved Form 5A Services and HRSA-Approved Form 5B Service Sites for 2014 are attached hereto as Exhibit 5.

12. As Section 330 grantee, Eisner Pediatric and Family Medical Center and its employees, including Dr. Afework, assist HHS with carrying out its federal grant mission of providing health services to medically underserved populations. 42 U.S.C. § 254b(a)(1).

13. Dr. Afework's acts of providing labor and delivery services to plaintiffs was on behalf of Eisner, as a deemed federal entity that is required by Section 330 of the Public Health Service Act to provide "health services related to [...] pediatrics, obstetrics, or gynecology." 42 U.S.C. § 254b(b)(1)(A)(i)(I).

14. Further, as stated above, the Secretary of HHS issued a "final and binding" Notice of Deeming Action, which provides that Eisner Pediatric and Family Medical Center and its officers, directors, and employees, including Dr. Afework, are deemed to be federal employees of the Public Health Service for purposes of § 233(a)'s absolute immunity. *See* Exhibit 3.

15. Dr. Afework can and does assert a colorable federal defense. Namely, he asserts that he has an absolute immunity under 42 U.S.C. § 233(a) from plaintiffs' claims of medical negligence arising out of his performance of medical, surgical, or related functions while acting within the scope of his deemed federal employment with Eisner Pediatric and Family Medical Center. *See* 42 U.S.C. § 233(g)-(n) (extending § 233(a)'s absolute immunity to deemed federal employees of the Public Health Service); *Hui v. Castaneda,* 559 U.S. 799, 806 (2010) (stating that "Section 233(a) grants absolute immunity to PHS officers and employees for actions arising out of the performance of medical or related functions within the scope of their employment by barring all action against them for such conduct.").

16. Pursuant to 28 U.S.C. § 1446, attached hereto as Exhibit 6 is a copy of all process, pleadings, and orders filed in state court. At this time, there is a dispute as to whether service was properly made. This removal is being made without prejudice to any objections thereto.

DATED: July 27, 2018

/s/
LAW + BRAND MEYER LLP
Gregory B. Geer (SBN 316572)
ggeer@lawbrandmeyer.com
2 North Lake Avenue, Suite 820
Pasadena, CA 91101
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FELDESMAN TUCKER LEIFER FIDELL LLP
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1129 20th Street NW, 4th Floor
Washington, DC 20036
(t) (202) 466-8960
(f) (202) 293-8103
Attorneys for Defendant Sebhat Afework

* Applications for admission *pro hac vice* will be promptly filed

VERIFICATION

I, Pajmon Zarrineghbal, to the best of my knowledge, information, and belief, declare as follows:

1. I am the General Counsel for Eisner Pediatric and Family Medical Center, doing business as Eisner Health ("Eisner").

2. I have read the above Notice of Removal and its contents. The above and foregoing representations in the Notice of Removal are true and correct.

DATED: July 27, 2018

/s/
Pajmon Zarrineghbal

CERTIFICATE OF SERVICE

On July 27, 2018, I certify that I electronically filed the foregoing with the clerk of the Court for the United States District Court by using the CM/ECF system. I also certify that I sent this Notice of Removal by First Class mail to the following:

Elliot N. Tiomkin
Law Offices of Elliot N. Tiomkin
4922 Lindley Avenue
Tarzana, California 91356
(310) 774-1437
etiomkin@gmail.com

Meredith Torres, Senior Attorney
U.S. Department of Health and Human Services
Office of the General Counsel
General Law Division
Claims and Employment Law Branch
330 C Street, SW
Switzer Building, Suite 2600
Washington, DC 20201
(202) 691-2369

Alex Azar, Secretary
United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Ted H. O'Leary
Packer, O'Leary & Corson

505 North Brand Boulevard, Suite 830
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Civil Process Clerk
US Attorney's Office for the Central District of California
300 North Los Angeles Street, Suite 7516
Los Angeles, CA 90012

Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

By: /s/
Gregory B. Geer (SBN 316572)

APPENDIX K

[HRSA Header with Notice No., Grant No., and Statutory Authority]

1. ISSUE DATE: 6/12/2013

2a. FTCA DEEMING NOTICE NO.:
1-F00000134-13-01

2b. Supersedes: [ ]

3. COVERAGE PERIOD:
FROM: 1/1/2014 THROUGH: 12/31/2014

4. NOTICE TYPE: Renewal

5a. ENTITY NAME AND ADDRESS:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

6. ENTITY TYPE: Grantee

7. EXECUTIVE DIRECTOR: Carl E Coan

8a. GRANTEE ORGANIZATION:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER

8b. GRANT NUMBER: H80CS04223

9. THIS ACTION IS BASED ON THE

INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

a. The authorizing program legislation cited above.
b. The program regulation cited above, and,
c. HRSA's FTCA-related policies and procedures.

In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.

10. Remarks:

The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.

Electronically signed by Jim Macrae, Associate Administrator for Primary Health Care on: 6/12/2013 1:19:44 PM

EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

Dear Carl E Coan:

The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 233(g)-(n), deems EISNER PEDIATRIC & FAMILY MEDICAL CENTER to be an employee of the PHS, for the purposes of section 224, effective 1/1/2014 through 12/31/2014.

Section 224(a) of the PHS Act provides liability protection under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2672, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under the FTCA, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment. This protection is exclusive of any other civil action or proceeding. Coverage extends to deemed entities and their (1) officers; (2) governing board members; (3) full- and part-time employees; and (4) contractors who are licensed or certified individual health care practitioners providing full-time services (i.e., on average at least 32 ½ hours per week for the entity for the period of the contract), or, if providing an average of less than 32 ½ hours per week of such service, are

licensed or certified providers in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.

This Notice of Deeming Action (NOA) is also confirmation of medical malpractice coverage for both EISNER PEDIATRIC & FAMILY MEDICAL CENTER and its covered individuals as described above. This NOA, along with documentation confirming employment or contractor status with the deemed entity, may be used to show liability coverage for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment.

In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.

This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of

claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.

Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at http://www.bphc.hrsa.gov.

For further information, please contact your HRSA Project Officer as listed on your Notice of Grant Award or the Bureau of Primary Health Care (BPHC) Help Line at 1-877-974-2742 or bphchelpline@hrsa.gov.

[HRSA Header with Notice No., Grant No., and Statutory Authority]

1. ISSUE DATE: 6/3/2014

2a. FTCA DEEMING NOTICE NO.:
1-F00000134-14-01

2b. Supersedes: [ ]

3. COVERAGE PERIOD:
FROM: 1/1/2015 THROUGH: 12/31/2015

4. NOTICE TYPE: Renewal

5a. ENTITY NAME AND ADDRESS:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

6. ENTITY TYPE: Grantee

7. EXECUTIVE DIRECTOR: Carl E Coan

8a. GRANTEE ORGANIZATION:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER

8b. GRANT NUMBER: H80CS04223

9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY

AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

a. The authorizing program legislation cited above.
b. The program regulation cited above, and,
c. HRSA's FTCA-related policies and procedures.

In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.

10. Remarks:

The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.

Electronically signed by Jim Macrae, Associate Administrator for Primary Health Care on: 6/3/2014 9:47:21 AM

EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

Dear Carl E Coan:

The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 233(g)-(n), deems EISNER PEDIATRIC & FAMILY MEDICAL CENTER to be an employee of the PHS, for the purposes of section 224, effective 1/1/2015 through 12/31/2015.

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licensed or certified providers in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.

This Notice of Deeming Action (NOA) is also confirmation of medical malpractice coverage for both EISNER PEDIATRIC & FAMILY MEDICAL CENTER and its covered individuals as described above. This NOA, along with documentation confirming employment or contractor status with the deemed entity, may be used to show liability coverage for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment.

In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.

This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of

claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.

Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at http://www.bphc.hrsa.gov.

For further information, please contact your HRSA Project Officer as listed on your Notice of Grant Award or the Bureau of Primary Health Care (BPHC) Help Line at 1-877-974-2742 or bphchelpline@hrsa.gov.

[HRSA Header with Notice No., Grant No., and Statutory Authority]

1. ISSUE DATE: 6/24/2015

2a. FTCA DEEMING NOTICE NO.:
1-F00000134-15-01

2b. Supersedes: [ ]

3. COVERAGE PERIOD:
FROM: 1/1/2016 THROUGH: 12/31/2016

4. NOTICE TYPE: Renewal

5a. ENTITY NAME AND ADDRESS:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

6. ENTITY TYPE: Grantee

7. EXECUTIVE DIRECTOR: Herb K Schultz

8a. GRANTEE ORGANIZATION:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER

8b. GRANT NUMBER: H80CS04223

9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY

AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

a. The authorizing program legislation cited above.
b. The program regulation cited above, and,
c. HRSA's FTCA-related policies and procedures.

In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.

10. Remarks:

The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.

Electronically signed by Tonya Bowers, Deputy Associate Administrator for Primary Health Care on: 6/24/2014 6:23:33 PM

EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

Dear Herb K Schultz:

The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 233(g)-(n), deems EISNER PEDIATRIC & FAMILY MEDICAL CENTER to be an employee of the PHS, for the purposes of section 224, effective 1/1/2016 through 12/31/2016.

Section 224(a) of the PHS Act provides liability protection under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2672, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under the FTCA, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment. This protection is exclusive of any other civil action or proceeding. Coverage extends to deemed entities and their (1) officers; (2) governing board members; (3) full- and part-time employees; and (4) contractors who are licensed or certified individual health care practitioners providing full-time services (i.e., on average at least 32 ½ hours per week for the entity for the period of the contract), or, if providing an average of less than 32 ½ hours per week of such service, are

licensed or certified providers in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.

This Notice of Deeming Action (NOA) is also confirmation of medical malpractice coverage for both EISNER PEDIATRIC & FAMILY MEDICAL CENTER and its covered individuals as described above. This NOA, along with documentation confirming employment or contractor status with the deemed entity, may be used to show liability coverage for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment.

In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.

This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of

claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.

Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at http://www.bphc.hrsa.gov.

For further information, please contact your HRSA Project Officer as listed on your Notice of Grant Award or the Bureau of Primary Health Care (BPHC) Help Line at 1-877-974-2742 or bphchelpline@hrsa.gov.

[HRSA Header with Notice No., Grant No., and Statutory Authority]

1. ISSUE DATE: 6/23/2016

2a. FTCA DEEMING NOTICE NO.:
1-F00000134-14-01

2b. Supersedes: [ ]

3. COVERAGE PERIOD:
FROM: 1/1/2017 THROUGH: 12/31/2017

4. NOTICE TYPE: Renewal

5a. ENTITY NAME AND ADDRESS:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

6. ENTITY TYPE: Grantee

7. EXECUTIVE DIRECTOR: Herb K Schultz

8a. GRANTEE ORGANIZATION:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER

8b. GRANT NUMBER: H80CS04223

9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY

AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

a. The authorizing program legislation cited above.
b. The program regulation cited above, and,
c. HRSA's FTCA-related policies and procedures.

In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.

10. Remarks:

The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.

Electronically signed by Tonya Bowers, Deputy Associate Administrator for Primary Health Care on: 6/23/2016 6:47:43 PM

EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

Dear Herb K Schultz:

The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 233(g)-(n), deems EISNER PEDIATRIC & FAMILY MEDICAL CENTER to be an employee of the PHS, for the purposes of section 224, effective 1/1/2017 through 12/31/2017.

Section 224(a) of the PHS Act provides liability protection under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2672, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under the FTCA, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment. This protection is exclusive of any other civil action or proceeding. Coverage extends to deemed entities and their (1) officers; (2) governing board members; (3) full- and part-time employees; and (4) contractors who are licensed or certified individual health care practitioners providing full-time services (i.e., on average at least 32 ½ hours per week for the entity for the period of the contract), or, if providing an average of less than 32 ½ hours per week of such service, are

licensed or certified providers in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.

This Notice of Deeming Action (NOA) is also confirmation of medical malpractice coverage for both EISNER PEDIATRIC & FAMILY MEDICAL CENTER and its covered individuals as described above. This NOA, along with documentation confirming employment or contractor status with the deemed entity, may be used to show liability coverage for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment.

In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.

This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of

claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.

Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at http://www.bphc.hrsa.gov.

For further information, please contact your HRSA Project Officer as listed on your Notice of Grant Award or the Bureau of Primary Health Care (BPHC) Help Line at 1-877-974-2742 or bphchelpline@hrsa.gov.

[HRSA Header with Notice No., Grant No., and Statutory Authority]

1. ISSUE DATE: 8/11/2017

2a. FTCA DEEMING NOTICE NO.:
1-F00000134-17-01

2b. Supersedes: [ ]

3. COVERAGE PERIOD:
FROM: 1/1/2018 THROUGH: 12/31/2018

4. NOTICE TYPE: Renewal

5a. ENTITY NAME AND ADDRESS:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015

6. ENTITY TYPE: Grantee

7. EXECUTIVE DIRECTOR: Chona J de Leon

8a. GRANTEE ORGANIZATION:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER

8b. GRANT NUMBER: H80CS04223

9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY

AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

a. The authorizing program legislation cited above.
b. The program regulation cited above, and,
c. HRSA's FTCA-related policies and procedures.

In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.

10. Remarks:

The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.

Electronically signed by Tonya Bowers, Deputy Associate Administrator for Primary Health Care on: 8/11/2017 9:59:08 AM

EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE STREET
LOS ANGELES, CA 90015-3023

Dear Chona J de Leon:

The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 233(g)-(n), deems EISNER PEDIATRIC & FAMILY MEDICAL CENTER to be an employee of the PHS, for the purposes of section 224, effective 1/1/2018 through 12/31/2018.

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licensed or certified providers in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.

This Notice of Deeming Action (NOA) is also confirmation of medical malpractice coverage for both EISNER PEDIATRIC & FAMILY MEDICAL CENTER and its covered individuals as described above. This NOA, along with documentation confirming employment or contractor status with the deemed entity, may be used to show liability coverage for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment.

In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.

This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of

claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.

Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at http://www.bphc.hrsa.gov.

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1. ISSUE DATE: (MM/DD/YYYY)
7/19/2018

2a. FTCA DEEMING NOTICE NO.:
1-F00000134-18-01

2b. Supercedes: [ ]

3. COVERAGE PERIOD:
From: 1/1/2019 Through: 12/31/2019

4. NOTICE TYPE:
Renewal

5. ENTITY NAME AND ADDRESS:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE ST
LOS ANGELES, CA 90015

6. ENTITY TYPE:
Grantee

7. EXECUTIVE DIRECTOR:
Warren J Brodine

8a. GRANTEE ORGANIZATION:
EISNER PEDIATRIC & FAMILY MEDICAL CENTER

8b. GRANT NUMBER:
H80CS04223

9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS

REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

a. The authorizing program legislation cited above.
b. The program regulation cited above, and,
c. HRSA's FTCA-related policies and procedures.

In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.

10. Remarks:

The check box [x] in the supercedes field indicates that this notice supercedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.

Electronically signed by Tonya Bowers, Deputy Associate Administrator for Primary Health Care on: 7/19/2018 9:32:29 AM

A printer version document only. The document may contain some accessibility challenges for the screen reader users. To access same information, a fully 508 compliant accessible HTML version is available on the HRSA Electronic Handbooks in the FTCA Folder. If you need more information, please contact the BPHC Helpline at 877-974-BPHC (2742); Weekdays from 8:30 AM to 5:30 PM ET.

FTCA DEEMING NOTICE NO:
1-F00000134-18-01

GRANT NUMBER:
H80CS04223

EISNER PEDIATRIC & FAMILY MEDICAL CENTER
1530 S OLIVE ST
LOS ANGELES, CA 90015

Dear Warren J Brodine:

The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 223 (g)-(n), deems EISNER PEDIATRIC & FAMILY MEDICAL CENTER to be an employee of the PHS, for the purposes of section 224, effective 1/1/2019 through 12/31/2019.

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