



MAR 25 1996

Memorandum

Date *Michael Mangano*
From *for* June Gibbs Brown
Inspector General

Subject Cost to the Government for Providing Medical Malpractice Coverage to Community and Migrant Health Centers (A-04-95-05018)

To Ciro V. Sumaya, M.D.
Administrator
Health Resources and Services Administration

The attached final report provides you with the results of our analysis of the cost to the Federal Government for providing medical malpractice liability insurance coverage to Community and Migrant Health Centers (C/MHC). Our objective was to analyze malpractice liability costs likely to be incurred by the Government if Federal Tort Claims Act (FTCA) coverage is extended to C/MHCs for an additional 3 years and determine if there are ways to reduce these costs while providing adequate malpractice liability protection to C/MHCs and their employees.

The FTCA currently provides unlimited dollar coverage for each medical malpractice claim because there are no Federal restrictions on the amount of money that can be paid on each claim under FTCA. We are recommending that the Health Resources and Services Administration (HRSA) consider seeking a legislative change to limit malpractice settlements or judgments involving C/MHCs to \$1 million. The HRSA concurred with our recommendation and agreed to develop a legislative proposal to amend FTCA to include this limitation. The HRSA's response is included in its entirety in Appendix B of the attached report.

We would appreciate being advised within 60 days of the status of corrective actions taken or planned on the recommendation. Should you wish to discuss this report, please call me or have a member of your staff contact Joseph J. Green, Assistant Inspector General for Public Health Service Audits, at (301) 443-3582.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**COST TO THE GOVERNMENT FOR
PROVIDING MEDICAL MALPRACTICE
COVERAGE TO COMMUNITY AND
MIGRANT HEALTH CENTERS**



JUNE GIBBS BROWN
Inspector General

MARCH 1996
A-04-95-05018



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Date *for* *Michael Mangano*
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From Inspector General

Subject Cost to the Government for Providing Medical Malpractice Coverage to Community and Migrant Health Centers (A-04-95-05018)

To **Ciro V. Sumaya, M.D.**
Administrator
Health Resources and Services Administration

This report provides you with the results of our analysis of the cost to the Federal Government for providing medical malpractice liability insurance coverage to Community and Migrant Health Centers (C/MHC).

The Federally Supported Health Centers Assistance Act of 1992 (the Act), Public Law 102-501, extended Federal Tort Claims Act (FTCA) coverage to C/MHC medical personnel for a 3-year demonstration period beginning January 1, 1993. The Act, slated to expire December 31, 1995, was recently extended to December 31, 1998. Under FTCA, the Government consents to be sued for claims resulting from any personal injury caused by the negligence of employees who were acting within the scope of their employment. In extending FTCA coverage to C/MHCs, the Government incurs costs to settle claims. It also incurs administrative costs through the: (1) Public Health Service (PHS), within the Department of Health and Human Services (HHS), which performs reviews to determine the merits of the claims before making a decision to settle or deny the claims, and (2) Department of Justice (DOJ), which is primarily responsible for litigating and settling the claims.

OBJECTIVE

Our objective was to analyze malpractice liability costs likely to be incurred by the Government by extending FTCA coverage to C/MHCs for an additional 3 years and determine if there are ways to reduce these costs while providing adequate malpractice liability protection to C/MHCs and their employees.

SUMMARY OF FINDINGS

The FTCA currently provides unlimited dollar coverage for each medical malpractice claim because there are no Federal restrictions on the amount of money that can be

on each claim under FTCA. Unlimited dollar coverage could result in significant additional malpractice claims cost under FTCA. Our actuarial consultants estimated the Federal Government would incur \$30.6 million more over a 3-year period to provide unlimited dollar coverage, compared to providing coverage with a \$1 million per claim limit. The details of the actuarial consultant's estimates are contained in Appendix A.

We are recommending the Health Resources and Services Administration (HRSA) consider seeking a legislative change to limit malpractice settlements or judgements involving C/MHCs to \$1 million.

In response to our draft report, HRSA concurred with our recommendation. The HRSA officials state they will develop a legislative proposal to amend FTCA to include our recommended limitation. The HRSA's response is included in its entirety as Appendix B.

BACKGROUND

Community and Migrant Health Centers

The C/MHCs are public or nonprofit agencies that receive PHS Act section 330 (Community) and 329 (Migrant) grants to provide primary health services within specific geographic areas to medically underserved populations that would otherwise seek those services in hospital emergency rooms at higher costs to the Federal Government. Examples of primary health services provided by employees and contracted personnel of C/MHCs are physician services, laboratory and radiology services, emergency medical services, and preventive dental care.

In addition to PHS grants, C/MHCs receive revenue from the Medicare and Medicaid programs, private insurance companies, State and local governments, other Federal grants, and patient payments.

Prior to the extension of FTCA coverage, C/MHCs obtained malpractice insurance coverage from private insurance companies to protect the facility and medical personnel against claims of medical malpractice. The C/MHCs were reimbursed for the cost of their medical malpractice coverage with PHS section 330 and 329 grant funds.

Legislative Authority for Coverage under FTCA and Federally Supported Health Centers Assistance Act of 1992

In 1946, Congress enacted FTCA under which the Federal Government consents to be sued for any personal injury caused by negligence of Federal employees who were acting within the scope of their employment.

As medical malpractice insurance premium costs increased, Congress began exploring ways to provide C/MHCs malpractice coverage. Congress passed the Act extending medical malpractice coverage under FTCA to C/MHCs for the period January 1993, through December 1995. This time period was recently extended to December 1998. Through the Act, C/MHCs were authorized to receive coverage for incidents of medical malpractice caused by their health care employees while acting within the scope of their employment after C/MHCs implement certain policies and procedures and review the credentials and claims history of their health care employees.

Congressional floor debate in September and October 1992, indicated that supporters of this legislation intended to increase the funds available to C/MHCs to provide primary health care services without increasing their budgets. The additional funding would result from reducing or eliminating liability insurance costs, i.e., insurance premiums C/MHCs pay for medical malpractice insurance from private insurers.

Litigation and Settlement of Claims Under FTCA

Medical malpractice claims against C/MHCs or one of their health care professionals are resolved under FTCA according to established procedures. The patient alleging injury must first file a claim with the PHS claims office in Rockville, Maryland, for administrative review and decision. Two reviews are performed to determine the merits of the claim. One review is performed by the PHS claims office and the other is performed independently by a specialist with expertise in a relevant field of medicine. Then the PHS Quality Review Panel, composed of a panel of members from each PHS agency, makes a recommendation to HHS' Office of General Counsel (OGC) as to the merits of the claim. The OGC decides whether to make an offer to settle, and, if so, how much to offer, or whether to deny the claim. The Secretary of HHS has authority to settle claims, but needs approval from DOJ for settlement amounts greater than \$25,000. The HHS has 6 months from the time a claim is submitted to either deny or settle it. Patients alleging injury at C/MHCs or by one of their health care professionals can file suit in a Federal district court after HHS completes the administrative review or 6 months after submitting the claim to the PHS claims office, whichever comes first. When HHS denies a claim, OGC notifies the patient of his/her rights and options for filing a suit and DOJ is responsible for the litigation and settlement.

Congress appropriated funds to settle claims filed against C/MHCs under FTCA in an appropriation separate from the section 329 and 330 grants. These funds are deposited into a holding account for access by DOJ to settle claims.

SCOPE

Our objective was to analyze the malpractice liability claims costs likely to be incurred by the Government by extending FTCA coverage to C/MHCs for an additional 3 years and determine if there are ways to reduce these costs while providing adequate malpractice liability protection to C/MHCs and their employees.

To obtain an understanding of C/MHCs and FTCA, we reviewed applicable laws, regulations, policies, and procedures; and interviewed:

- The PHS and HRSA officials in Atlanta, Georgia, and Rockville, Maryland; and
- General Accounting Office (GAO) and DOJ officials in Washington, D.C.

The data we needed to measure the cost benefit for Fiscal Years (FY) 1993-1995 was not readily available. Therefore, we obtained cost data GAO gathered in a nationwide study of C/MHCs issued in September 1993 entitled, *Medical Malpractice - Estimated Savings and Costs of Federal Insurance at Health Centers* (GAO/HRD-93-130).

The GAO surveyed 513 C/MHCs regarding liability insurance costs. Data was reported by 374 (73 percent) of the C/MHCs surveyed. We reviewed GAO's report and working papers, which provided us a sufficient basis for relying on their work. In addition, we performed procedures to ensure that the data we obtained from GAO was complete for all 374 C/MHCs reporting in the nationwide survey. Also, we confirmed that all 513 C/MHCs were similar entities and had an opportunity to respond to GAO's survey.

In addition, we contracted with a nationally known actuarial and management consultant firm, Tillinghast. We asked them to provide us with an analysis of the estimated costs for the period January 1996 through December 1998, associated with:

- (1) extending FTCA coverage to C/MHCs in its present form; and
- (2) extending FTCA coverage to C/MHCs under limitations.

Tillinghast relied on cost data GAO obtained for FYs 1986-1991, after comparing it to data obtained from private insurers. Also, the actuarial firm relied on data we obtained

from HRSA for FYs 1993-1994, and current industry trend data to develop cost estimates. The details of Tillinghast's analysis of costs are contained in Appendix A.

We performed our work in accordance with generally accepted government auditing standards. A review of HRSA's internal controls was not necessary to satisfy our audit objectives. We performed our field work at our Regional Office in Atlanta, Georgia, HRSA in Rockville, Maryland, GAO in Washington, D.C., the DOJ in Washington, D.C., and Tillinghast in Atlanta, Georgia, from December 1994 through September 1995.

DETAILED RESULTS OF REVIEW

The GAO reported in 1993 that malpractice insurance with unlimited dollar coverage, such as FTCA currently provides, will generally cost about 50 percent more than coverage limited to \$1 million per claim. The FTCA currently provides unlimited dollar coverage for each medical malpractice claim because there are no Federal restrictions on the amount of money that can be paid on each claim under FTCA. Unlimited dollar coverage could result in significant additional malpractice claims costs under FTCA. Independent of GAO's estimate, our actuarial consultants estimated the Federal Government would incur \$30.6 million more over a 3-year period to provide unlimited dollar coverage compared to providing coverage with a limit of \$1 million per claim.

Please refer to Appendix A for a detailed explanation of the methodology the actuarial consultant used to make this estimate.

FTCA Provides Unlimited Dollar Coverage; Private Malpractice Insurance Commonly Provides Coverage of About \$1 Million Per Claim

The FTCA currently provides unlimited dollar coverage for each medical malpractice claim because there are no Federal restrictions on the amount of money that can be paid on each claim under FTCA. In 1993, GAO reported about 57 percent of policies C/MHCs purchased from private insurers during Calendar Year (CY) 1991 provided coverage up to \$1 million per claim. Our actuarial consultant advised us that for this same period, the average limit purchased at that time by C/MHCs was \$850,000.

A \$1 million per claim limit would also be similar to the limits self-employed physicians in private practice generally purchase. American Medical Association (AMA) data shown in *Studies in the Socioeconomic Environment of Medicine, 1995*, indicates that the average per claim limit purchased by self-employed physicians in private practice was approximately \$1.1 million per claim. The information in the study was derived from AMA's Socioeconomic Monitoring System 1984-1994 core surveys of nonfederal patient care physicians, excluding residents. Information reported by respondents to the surveys

was weighed to correct for survey nonresponse in order to provide a more accurate estimate of the experience of the entire physician population.

**AVERAGE CLAIM COVERAGE LIMIT
PURCHASED BY SELF-EMPLOYED PHYSICIANS IN 1993
(In Millions)**

	<u>Coverage Limit/Claim</u>
All physicians	\$ 1.2
Specialty:	
General/Family Practice	\$ 0.9
Internal Medicine	1.2
Surgery	1.2
Pediatrics	1.1
Obstetrics/Gynecology	1.1
Radiology	1.8
Psychiatry	1.2
Anesthesiology	1.3
Pathology	1.4
Other	1.2

Similarly, a recent publication of the St. Paul Insurance Group, which is the largest insurer of physician malpractice, indicated that 53 percent of the physicians insured by St. Paul purchased \$1 million per claim limits.

Under a \$1 million per claim limit, the Government could pay up to \$1 million to settle a claim or pay a court judgement. Under the Act, the remedy against a C/MHC employee or the C/MHC itself is exclusive of any other action against the employee or the entity, and thus the employee or entity would be shielded from personal liability for any claims that might exceed \$1 million.

RECOMMENDATION

We recommend that HRSA consider seeking a legislative change to limit malpractice settlements or judgements involving C/MHCs to \$1 million.

HRSA RESPONSE

In response to our draft report, HRSA concurred with our recommendation. In addition, HRSA officials state they will develop a legislative proposal to amend FTCA to include our recommended limitation.

APPENDICES

ESTIMATES BY ACTUARIAL CONSULTANT

Following are (1) a summary of the methodology used by our actuarial consultant; (2) a table showing the actuary's estimates in the form of a cost comparison of extending current coverage for an additional three years versus limiting the government's liability to \$1 million per claim; and (3) notes and explanations pertaining to the actuary's estimates.

METHODOLOGY

We contracted with a nationally known actuarial and management consultant firm, Tillinghast, to provide us with an analysis of the costs associated with extending FTCA coverage to C/MHCs in its present form along with other viable options of providing C/MHCs with medical malpractice coverage for the 3-year period January 1996 through December 1998. Tillinghast used data GAO obtained for FYs 1986-1991, data we obtained from HRSA for FYs 1993-1994, and current industry trend data to develop cost estimates.

Specifically, we requested Tillinghast to update costs obtained by GAO from C/MHCs for FYs 1986-1991, using recent trends. In addition, we requested Tillinghast to estimate costs of the Government using a \$1 million per claim limit.

Tillinghast also included estimates for the Federal Government's expenses of processing claims in each scenario.

We provided Tillinghast with updated estimates of the full-time equivalent (FTE) providers eligible for FTCA coverage in FYs 1993 and 1994. Based on this updated information and data obtained by GAO for FYs 1986-1991, Tillinghast estimated that FTE levels would increase by 9 percent from the 1994 level. In addition, Tillinghast assumed that FTE levels would remain at the FY 1995 level for CYs 1996-1998. If the FTE levels increased during CYs 1996-1998, the cost estimates would increase accordingly.

Tillinghast applied several other assumptions in estimating the costs using industry data and/or actuarial expertise:

- (1) all C/MHCs will immediately accept FTCA coverage as of January 1, 1996;
- (2) malpractice claim costs will increase at 6 percent per year per FTE provider. In the analysis for GAO in 1993, an increase of 11 percent

was assumed, however, industry trends indicate a decrease in claims volume;

- (3) the C/MHCs will continue to reimburse part-time obstetrical service providers (providers working 32.5 hours per week or less) for a share of their malpractice insurance costs. This continued reimbursement will not have an impact on the current analysis because it does not contribute to a savings or cost to the Federal Government; and
- (4) the Federal Government's system for processing claims will be somewhat faster than the State tort systems. In addition, the Federal Government's costs for processing claims will be slightly lower than the corresponding costs of the insurance industry.

Tillinghast provided us with the following cost estimates of FTCA coverage under the provisions of current legislation and under an alternative provision with limitations on coverage.

**COST COMPARISON OF EXTENDING CURRENT
COVERAGE FOR AN ADDITIONAL THREE YEARS
VERSUS LIMITING GOVERNMENT'S LIABILITY
TO \$1 MILLION PER CLAIM**

(Millions)

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>Total</u>
<u>I. Estimated Costs of Current FTCA Coverage</u>				
A. Present Value Funding for Claims-Made Losses	\$31.4	\$33.3	\$35.2	\$ 99.9
B. Governmental Expenses	6.5	6.9	7.3	20.7
C. Total Cost to Federal Government [A+B]	\$37.9	\$40.2	\$42.5	\$120.6
<u>II. Estimated Costs of FTCA with \$1 Million per Claim Limit</u>				
D. Present Value Funding for Claims-Made Losses	\$21.8	\$23.1	\$24.4	\$69.3
E. Governmental Expenses	6.5	6.9	7.3	20.7
F. Total Cost to Federal Government [D+E]	<u>\$28.3</u>	<u>\$30.0</u>	<u>\$31.7</u>	<u>\$90.0</u>
<u>III. Cost Benefit of Limiting FTCA Coverage to \$1 Million per Claim</u>				
	<u>\$ 9.6</u>	<u>\$10.2</u>	<u>\$10.8</u>	<u>\$30.6</u>

NOTES AND EXPLANATIONS

Line
Item

Explanation

IA. Present Value Funding for Claims-Made Losses represents the amounts our actuarial consultants estimated would need to be appropriated at the beginning of each year and placed in an interest-bearing account earning 6 percent interest for paying claims. The actuary also advised if funding is done on a pay-as-you-go basis, the funding should be increased 25 percent for the existing occurrence coverage and 11 percent for our recommended claims-made coverage.

IB. Governmental Expenses represent the estimated amounts of administrative costs the Government would incur for litigating claims. There are a number of sources of additional governmental expense. The biggest cost is likely to be the cost of additional staff to settle (or litigate) malpractice claims, and possibly the cost of outside lawyers, if these are hired on an hourly basis. Other costs would include: fees for expert witnesses; the cost of computer systems to track malpractice claims and report them to the National Practitioner's Data Base and the health centers; and the cost of any additional claim prevention programs. There may also be a need for a supervisory infrastructure, and the need to develop manuals on appropriate procedures for handling malpractice claims. If hired staff in a few centralized locations are used, there may be significant travel costs, since the claims are likely to be scattered around the United States and its territories.

The cost of additional governmental expense was estimated by reviewing insurance industry costs, and then reducing these significantly using costs reported in the Best's Aggregates and Averages, 1995, published by A. M. Best Company, Oldwick, New Jersey.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Health Resources and
Services Administration
Rockville MD 20857

FEB 22 1996

TO: Inspector General, OS, DHHS

FROM: Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report "Cost to the Government for Providing Medical Malpractice Coverage to Community and Migrant Health Centers" - CIN A-04-95-05018 Dated December 1995

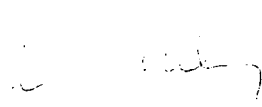
This is in response to your December 7, 1995, memorandum requesting comments to the draft report, "Cost to the Government for Providing Medical Malpractice Coverage to Community and Migrant Health Centers." The Health Resources and Services Administration (HRSA) has the following comments.

OIG RECOMMENDATION

HRSA considers seeking legislative change to limit malpractice settlements or judgments involving C/MHCs to \$1 million.

HRSA RESPONSE

We concur. The Bureau of Primary Health Care (BPHC) will develop a legislative proposal (A-19) to amend the Federal Tort Claims Act (FTCA) to include a limitation on malpractice settlements or judgments involving C/MHCs to \$1 million per occurrence.


Ciro V. Sumaya, M.D., M.P.H.T.M.