



## RISK MANAGEMENT SERIES

### For more information contact

Jacqueline C. Leifer, Esq. or  
Jennifer D. Leonard, Esq. or  
Grace Culley, Esq.  
Feldesman Tucker Leifer Fidell LLP  
2001 L Street NW  
Washington DC 20036  
Telephone: (202) 466-8960  
Fax: (202) 293-8103  
Email: JLeonard@feldesmantucker.com

or

Malvise A. Scott  
Vice President, Programs and Planning  
National Association of Community  
Health Centers, Inc.  
7200 Wisconsin Avenue, Suite 210  
Bethesda, Maryland 20814  
Telephone: (301) 347-0400;  
Fax: (301) 347-0459  
Email: MScott@nachc.com

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## Credentialing and Privileging of Health Center Clinicians: Tips To Help Navigate the Legal Pitfalls

Credentialing and privileging are the processes by which health centers ensure that their health care practitioners are competent and properly qualified to provide care to patients. These processes are vitally important to protect patient safety, provide high-quality health care services, reduce medical errors, as well as avoid potential legal liabilities. It is very important that health centers understand their responsibilities with respect to credentialing and privileging and implement appropriate programs to meet these responsibilities. Otherwise, they run the risk of incurring potential liability that may not be covered by the Federal Tort Claims Act (“FTCA”) or other liability insurance policies.

### This Information Bulletin outlines:

- ◆ **Health centers’ obligations** to credential and privilege all of their practitioners;
- ◆ **Applicable guidance** issued by the Bureau of Primary Health Care (“BPHC”);
- ◆ **Potential risks and liabilities** should a health center fail to credential and privilege as required; and
- ◆ **Tips on establishing procedures for ensuring compliance** with this obligation.

### **AUTHORITY: CREDENTIALING AND PRIVILEGING ARE NOT OPTIONAL ACTIVITIES**

Establishing comprehensive credentialing and privileging policies and procedures and consistent implementation are not optional activities.

**Federal Law** – Federal law and BPHC policy require that health centers establish a formal process for the regular verification of the credentials of health care practitioners

and the definition of their privileges. Specifically, the Federally Supported Health Centers Assistance Act of 1992<sup>1</sup> requires each deemed health center that participates in FTCA to credential all of its physicians and other licensed or certified health care practitioners.

**BPHC Program Expectations** – BPHC’s Health Center Program Expectations (Policy Information Notice [“PIN”] 98-23) states that a health center’s credentialing process should meet the standards of national accrediting agencies such as the Joint Commission on Accreditation of Health Care Organizations (“JCAHO”) or the Accreditation Association for Ambulatory Health Care, Inc. (“AAAHC”), in addition to the requirements for coverage under the FTCA. Please note that PINs 2001-16 and 2002-22 update and clarify BPHC’s credentialing and privileging expectations and will be discussed below.

**The Primary Care Effectiveness Review (PCER)** – The PCER Clinical Module addresses health centers’ credentialing and privileging procedures and requires that health centers retain documentation regarding verification of each practitioner’s credentials and definition of privileges in the practitioner’s personnel files.<sup>2</sup>

## DEFINITIONS: CREDENTIALING AND PRIVILEGING TERMINOLOGY

The first step in fulfilling a health center’s responsibilities with respect to privileging and credentialing is to clearly understand credentialing and privileging-related terminology. Below is a summary of key terms as defined by BPHC in PIN 2002-22:

**Credentialing** – is the process of assessing and confirming the qualifications of a licensed or certified health care practitioner.

**Licensed or Certified Health Care Practitioner** – is an individual that must be licensed, registered or certified by the State, commonwealth or territory in which a health center is located. Licensed or certified health care practitioners can be further classified into two groups:

◆ **Licensed Independent Practitioners (“LIPs”)** – are physicians, dentists, nurse practitioners, nurse midwives, and any other “individual permitted by law and the organization to provide care and services without direction or supervision, within the scope of the individual’s

license and consistent with individually granted clinical privileges.”<sup>3</sup> In other words, if the licensing laws in a State permit individuals to practice independent of physician supervision, and the health center chooses to employ such individuals, these clinicians are considered LIPs by BPHC and, therefore, must be appropriately credentialed.

◆ **Other Licensed or Certified Health Care Practitioner (“OLCPs”)** – include individuals who are licensed, registered or certified but are not permitted by law to provide patient care services without direction and supervision. OLCPs include laboratory technicians, social workers, medical assistants, licensed practical nurses and dental hygienists. These individuals must also be credentialed but not necessarily in accordance with the strict standards applicable to LIPs, as discussed below.<sup>4</sup>

**Primary Source Verification** – is a process of verifying a specific credential by obtaining appropriate information from the original source providing the credential. Methods of primary source verification include direct correspondence, telephone verification, internet verification, and reports from credential verification organizations. A specific example of primary source verification is the health center’s verification that a clinician’s license is valid by calling the State licensing board, or, if made available by the licensing board, checking credentialing information on the agency’s website.

1 P.L. No. 102-501 (Sept. 24, 1992).

2 BPHC PIN 2000-06.

3 BPHC PIN 2002-22 borrows the definition of LIP from the Joint Commission on Accreditation of Healthcare Organizations, 2002-2003 Comprehensive Accreditation Manual for Ambulatory Care.

4 Note that these are the definitions directly provide by BPHC PIN 2002-22. However, it is possible that a practitioner type mentioned in BPHC PIN 2002-22 as a LIP could be a OLCP if state law requires supervision for that category. A health center must check local law and make a determination as to which category the particular practitioner falls into.

### Secondary Source Verification

– is a process of verifying a specific credential through sources other than the original document, such as reviewing copies of relevant credentialing documents. A specific example of secondary source verification would occur if a health center allows a clinician to provide copies of his or her immunization records or life support training rather than directly contacting the individual or organization that provided the immunizations or training.

**Privileging** – is the process of authorizing the specific scope and content of a licensed or certified health care practitioner's patient care services. For many health centers, the scope of a practitioner's privileges is described in his or her job description or as part of his/her employment contract.

## THE FUNDAMENTALS

### Credentialing

Every health center must have in place a formal and documented program that ensures verification of all necessary credentials for every job applicant. BPHC specifies different verification requirements depending on whether the applicant is a LIP or OLCP. The following chart outlines the specific verification requirements for both groups:

### CREDENTIALING REQUIREMENTS

Required verification of:	Method	
	LIP	OLCP
Licensure, registration, or certification	Primary source with local licensing, registration or certification board	Primary source with local licensing, registration or certification board
Education	Primary source Medical/Graduate School or American Medical Association (AMA)/ American Osteopath Association (AOA) profile	Secondary source
Training	Primary source	Secondary source
Current competence	Primary source: Written observations from other professionals who have witnessed the practitioner work. Observations should address practitioner's actual experience as well as ethical performance.	Review of clinical qualifications and performance.
Health fitness (ability to perform the requested privileges)	Statement from individual that is confirmed either by the director of a training program, chief of staff/services at a hospital where privileges exist, or a licensed physician designated by the health center.	Supervisory evaluation per job description.
National Practitioner Data Bank Query (malpractice history).	Required, if reportable.	Required, if reportable.
Drug Enforcement Administration (DEA) registration, hospital admitting privileges.	Secondary source, if applicable.	Secondary source, if applicable.
Government issued picture identification (as applicable).	Secondary source, if applicable.	Secondary source, if applicable.
Immunization and PPD status.	Secondary source.	Secondary source.
Life support training (as applicable).	Secondary source, if applicable.	Secondary source, if applicable.

Credentialing should be completed before any individual is allowed to provide patient care services. Note that the above requirements are considered a minimum, and the health center may elect to obtain additional verifications. For example, it is advisable to query:

- ◆ The Health Integrity Protection Data Bank (“HIPDB”)<sup>5</sup> for any potential sanctions and exclusions.
- ◆ The Department of Health and Human Services (“DHHS”) Office of the Inspector General’s (“OIG”) List of Excluded Individuals<sup>6</sup> for any possible fraud charges.

Moreover, instead of having less stringent verification procedures for OLCPs, health centers should consider credentialing OLCPs in the same manner as LIPs. The final determination that a licensed or certified health care practitioner meets all of the credentialing requirements should be documented, in writing, and kept in the practitioner’s personnel files.

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## Privileging

Once a health center has appropriately credentialed a practitioner, the next step is for the center to authorize a practitioner to provide specific services to its patients. As stated above, health centers are responsible for ensuring that a practitioner possesses the requisite skills and expertise to manage and treat patients and to perform the specific medical procedures required to provide the authorized services. It is important that the health center grant privileges only for services that the health center has the infrastructure and capability to support. It also is imperative that the health center review its BPHC-approved “scope of project” with privileging practitioners, thereby ensuring that the privileges it grants to a practitioner are within the center’s scope and, therefore, covered by FTCA.

If the practitioner is privileged to provide services outside of a health center’s scope of project, the health center must obtain professional liability coverage for the practitioner

with respect to such services. Obviously, failure to secure additional professional liability coverage could result in potentially devastating financial liability for a health center if the practitioner and/or the health center are named in a malpractice suit for services that are outside of the center’s scope of project and are not otherwise covered by liability insurance.

## Privileging Renewal

BPHC advises that health centers should re-privilege all of their licensed and certified practitioners at least every two years.<sup>7</sup> This re-privileging process necessarily entails:

- ◆ Re-checking of credentials, including primary source verification of expiring or expired credentials (*e.g.*, verification of licensure, registration, or certification);
- ◆ Re-verify current competence through primary source based on peer review and/or performance improvement data;
- ◆ Re-verify the health status of all practitioners, which can be done through a written statement from the practitioner, countersigned by a licensed physician designated by the health center.

It is important to note that BPHC policy states that health centers should have an appeals process for LIPs if a decision is made to discontinue or deny privileges, but that an appeals process is optional for OLCPs.

5 <http://www.npdb-hipdb.com>

6 <http://www.oig.hhs.gov/fraud/exclusions/listofexcluded.html>

7 BPHC PIN 2002-22.

## Board of Directors' Responsibilities

The Board of Directors has the ultimate responsibility for:

- ◆ Approving policies and procedures that define the health center's credentialing and privileging program;
- ◆ Monitoring compliance with the program;
- ◆ Determine that all credentialing requirements have been satisfied; and
- ◆ Approve privilege appointments for each individual credentialed and privileged with the health center.

As with all Board action, these approvals should be documented in the Board's minutes.

The Board may delegate responsibility for carrying out verification of credentials (*e.g.*, contacting former employers, etc., as depicted in the chart above) and drafting recommended privileges to an individual or committee. For example, the Board may resolve to direct the health center's Human Resources Director to credential all practitioners in accordance with the policy approved by the Board, and also may delegate its privileging responsibilities to a privileging committee or the quality assurance committee of the Board.

## LEGAL CONSEQUENCES OF NON-COMPLIANCE

Failure to credential and privilege as required is not only dangerous from the standpoint of patient safety, but it can result in costly and burdensome litigation for health centers. This section outlines various specific legal liabilities that could flow from such failures. Essentially, there are two (2) potential types of liability: third-party liability resulting from negligent or inappropriate credentialing; and suits brought by a practitioner on account of a health center's actions with respect to credentialing or the granting of privileges to the practitioner.

### Potential Third Party Liability

#### Denial of FTCA Coverage

As discussed above, the Federally Supported Health Centers Assistance Act of 1992 requires that health centers properly credential their practitioners as a condition of FTCA coverage. Consequently, failure to do so could result in failure to be "deemed" for purposes of FTCA coverage. The consequences of a denial of FTCA coverage cannot be understated. Given skyrocketing malpractice judgments, a single malpractice suit (in the absence of FTCA or expensive commercial liability insurance coverage) potentially could force a health center into bankruptcy.

#### Negligence

In many states, a claim of "negligent credentialing" can be asserted against health care entities that improperly credential a practitioner. Typically, patients bring these types of actions because they have been harmed by a practitioner who they claim was not qualified to perform the services. These types of suits are premised on the fact that the health care entity should have discovered that the practitioner was not qualified during the credentialing and privileging process.

For health centers that purchase clinical capacity from another health care entity (*e.g.*, a hospital) as part of an arrangement whereby clinicians employed by that entity are providing services to health center patients on behalf of the health center, it is advisable to secure an agreement specifying that all contracted practitioners must proceed through the health center's credentialing and privileging processes before providing care to patients. If the entity refuses to execute such an agreement, a health center should, at a minimum, secure (1) written documentation of a practitioner's credentials and (2) appropriate indemnification provisions in the event that the practitioner was not actually credentialed or was improperly credentialed by the other health care entity.

### Liability to Practitioners

#### Defamation

Most states recognize the "tort" of defamation. A defamation lawsuit can result if an individual or organization causes harm to another's rep-

utation by publishing (even to only one other person) untrue information about that person. A health center may inadvertently defame a practitioner in several ways during the credentialing and privileging processes. For example, a practitioner could sue a health center for defamation if a member of the Board of Directors untruthfully told a third party that such practitioner was not hired or privileged because he or she was not competent to treat patients. Similarly, a health center employee who informs another health care entity that a practitioner was not hired or retained because he or she was a “bad” doctor may precipitate a defamation claim.

A defamation suit also could potentially arise from negligent credentialing. For example, a practitioner may have grounds to bring a defamation suit against a health center if the health center failed to properly credential the practitioner and then refused to hire him or her based on its negligent credentialing. The practitioner would arguably have solid grounds for a defamation suit because the decision not to hire the practitioner would have been based on the publication of untrue information derived from the health center’s improper credentialing.

### Privacy Violations

It is unlawful in every State for a health center to disclose (intentionally or unintentionally), without consent, personal credentialing and privileging information, even if true, about a practitioner to any person or entity not involved in the credentialing and privileging

processes or otherwise having no need to know such information. For example, failure to provide physical safeguards to protect practitioners’ personnel files or the disclosure of credentialing information to third parties without consent could lead to a privacy lawsuit. As a result, health centers should limit access to credentialing and privileging information to only those who need it to fulfill their responsibilities to the health center and be very careful to train anyone with access that such information is strictly confidential and that it must not be discussed with anyone who does not have a need for the information.

### Wrongful Denial of Privileges

As stated above, BPHC requires that health centers have an appeals process in place for LIPs whose privileges are denied or revoked. In simplest terms, this means that if a health center refuses to privilege/re-privilege or terminates a practitioner based upon credentialing information, including performance-related information, the health center must give the practitioner an opportunity to appeal the decision. Failure to allow the practitioner to appeal the decision could create unnecessary legal problems for the health center, including a potential wrongful termination case based on a violation of this policy.

While the structure and complexity of the appeals process will vary widely depending upon the size of a health center, it should entail, at a minimum, review of the practitioner’s credentialing and/or privileging file by an individual or committee that was not directly involved in the

initial credentialing/privileging process. For health centers purchasing clinical capacity from another entity, it is advisable to secure a release from the contracting entity specifying that it will not dispute a health center’s decision to reject an appointment of a practitioner who does not meet the health center’s credentialing and privileging standards.

## RECOMMENDATIONS

### 1. Draft and Implement Clear, Written Policies

As emphasized previously, it is vital that health centers have a formal credentialing and privileging policy that is reviewed and approved by the Board of Directors. This policy should, at a minimum, comply with BPHC guidelines as set forth in the relevant PINs and it is recommended that all health centers go beyond those guidelines and require additional and more stringent verifications (*e.g.*, queries to HIPDB and the OIG, as noted above). Health centers also should carefully review any contracts they have with managed care practitioners and/or insurance companies as these contracts may require that health centers put in place credentialing programs that comply with more stringent requirements, such as those set forth by the National Committee for Quality Assurance (“NCQA”).

## 2. Document the Health Center's Compliance

A health center should have a credentialing and privileging policy that requires the health center to document all primary and secondary source verification, in writing. Practitioners' privileges should be written and should clearly be consistent with the health center's approved scope of project. Supporting documentation for credentialing and the description of privileges should be maintained in each practitioner's personnel file. Note, however, that if a practitioner's credentialing or privileging file contains personal health information, in accordance with the Americans with Disabilities Act, the health information must be kept separate from the practitioner's personnel file and locked.

A health center's credentialing and privileging process, including its documentation, should be periodically audited as part of the health center's compliance program. Additionally, a health center should ensure that its Board of Directors' minutes reflect that it approved the health center's credentialing and privileging policies. Board minutes (or committee minutes or management's documentation) should also reflect the approval

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of the credentialing and privileging of specific practitioners. Any delegation made by the Board of Directors should be clearly documented by a Board resolution.

## 3. Draft and Implement Confidentiality Policies

It is very important that health centers establish clear confidentiality policies applicable to the credentialing and privileging processes. Board members and other individuals or committees involved in these processes should share personal information about practitioners only with each other to determine whether or not to hire, terminate and/or privilege the particular person at issue. No one may disclose a practitioner's credentials to parties outside of the credentialing and privileging processes unless, of course, there is a separate duty to report information (e.g., discovery of a previously unreported criminal violation, duty to report to the National Practitioner Databank medical malpractice claims for current practitioners, etc.). Moreover, information contained in personnel files relating to credentials and privileging should be kept in secure, locked files with restricted access.

## 4. Contract Out the Credentialing/Privileging Process to a Credentials Verification Organization

It is permissible for a health center to contract with a credentials verification organization ("CVO") that will, for a fee, gather and organize much of the information required for credentialing. CVOs can be extraordinary time savers for health centers and usually are quite reasonable financially. It is important to note, however, that use of such agencies does not relieve a health center of the duty of securing complete and accurate information. If a CVO is negligent in verifying or providing credentialing information, the health center would continue to be responsible for the consequences of that negligence, unless the health center included an appropriate indemnification provision in its agreement with the CVO. JCAHO advises that, before contracting with a CVO, an entity should evaluate various factors to determine whether the CVO can properly verify and provide credentialing information. These factors are outlined in Appendix A of BPHC PIN 2002-22.

## 5. Educate Practitioners About the Credentialing and Privileging Processes

Health centers should educate practitioners about the importance and necessity of the credentialing and privileging processes and the detrimental consequence of non-

compliance. If practitioners better understand the role of credentialing and privileging, they will come to understand that these processes are not unnecessary or overly intrusive, but reasonable and designed to protect patient safety and enhance quality of care.

Health centers could accomplish this type of education in a number of ways. One simple approach is to provide handouts, explaining the rationale behind these processes, the ramifications of non-compliance, and a checklist of duties for both the practitioner and the health center. However, it is the health center's responsibility to ensure that it complies with credentialing requirements and, in situations where practitioners refuse to comply or fail to meet deadlines for submis-

sion of information, the health center must have in place a method for disciplining practitioners or some other type of recourse in order to ensure that it does not incur liability because it was unable to credential and privilege practitioners.

## 6. Review and Update

Health centers should, at least annually, review credentialing and privileging policies to ensure that they are up to date with statutory, regulatory and other applicable requirements, as well as with industry standards. Additionally, health centers should review their credentialing and privileging procedures as part of their ongoing compliance efforts.

## CONCLUSION

Credentialing and privileging play a vital role in protecting patients, ensuring quality of care, and avoiding unnecessary and potentially costly litigation. Health centers should consider credentialing and privileging as ongoing processes that promote the ability to fulfill its mission. As such, it is important that health centers understand their obligations with respect to credentialing and privileging, and, consistent with Federal law and BPHC policy, implement appropriate policies and procedures to carry-out these duties.



**National Association of Community Health Centers, Inc.®**

7200 Wisconsin Avenue, Suite 210

Bethesda, MD 20814

Telephone: 301-347-0400

Fax: 301/347-0459

Website: [www.nachc.com](http://www.nachc.com)