



COVID 19 & FTCA Office Hour

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Today's Faculty



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COVID-19 & FTCA Office Hour #2

NACHC, in collaboration with BPHC's FTCA Division and Feldesman Tucker Leifer Fidell LLP, is continuing to hold a series of Office Hours to answer health center specific COVID-19 FTCA-related questions.

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Telehealth-Related Questions

Can we provide services to non-patients via telehealth?

Can we provide services at temporary locations via telehealth?

Can we provide services to patients via telehealth when the provider is located in a different state?

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May health centers provide in-scope services through telehealth to individuals who are not current health center patients? (Added: 3/19/2020).

As a result of the Secretary's declaration relating to the current COVID-19 public health emergency, health center providers may deliver in-scope services via telehealth to individuals who have not previously presented for care at a health center site and who are not current patients of the health center for the duration of this public health emergency. This includes triage services, including initial consultations.

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Telehealth visits are within the scope of project if:

- The individual receives an **in-scope required or additional health service**;
- The provider **documents the service in a patient medical record** consistent with applicable standards of practice; and
- The provider is **physically located** at a **health center service site** or at **some other location on behalf of the health center** (*e.g.*, **provider's home**, emergency operations center).
- Health centers should focus services provided by telehealth on serving patients and other individuals located **inside their service area** or **with areas adjacent to the covered entity's service area**.

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HRSA recognizes that patients outside these areas may seek health center screenings and triage by telehealth. **Health centers that continue to maintain services for target populations in their service area and provide occasional in-scope services via telehealth to individuals outside these areas would be providing services within the Health Center Program scope of project for all such activities.** Please review PAL 2020-01: Telehealth and Health Center Scope of Project (PDF – 520 KB) for more information.

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Can a health center use telehealth to provide services to a patient at a location that is not an in-scope service site? Can this occur if neither the health center provider nor the patient is at an in-scope service site (*e.g.*, both the provider and patient are at their respective homes)? (Updated: 4/7/2020)

From a Health Center Program scope of project policy perspective, using telehealth to provide services to a patient at a location that is not an in-scope service site is allowable if:

- **The service being provided via telehealth is within the health center's **approved scope of project** (recorded on Form 5A);**
- **The clinician delivering the service is a health center provider working on **behalf of the health center**; and**
- **The individual receiving the service is a **health center patient**.**

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HRSA strongly encourages health centers that provide, or are planning to provide, health services via telehealth to consult with professional organizations, regulatory bodies, and private counsel **to help assess, develop, and maintain written telehealth policies that are compliant with Health Center Program requirements; federal, state, and local requirements; and applicable standards of practice.** HRSA also encourages health centers to consider the range of issues that would support successful implementation of telehealth. Please review PAL 2020-01: Telehealth and Health Center Scope of Project (PDF – 520 KB) for more information.

For questions about FTCA coverage, please contact Health Center Program Support online or call for FTCA assistance at 877-464-4772, 8:00 a.m. to 5:30 p.m. ET, Monday-Friday (except federal holidays).

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Do health centers need to request a change in scope for a provider to deliver in-scope services via telehealth from their home or another site not on Form 5B, assuming all the criteria for doing so (see question above) are met? (Added: 4/7/2020)

Health centers do not need to request a change in scope to deliver in-scope services via telehealth on behalf of the health center from the provider's home or from another location that is not a Form 5B Service Site. In addition, health centers do not need to have "Home Visits" listed on their Form 5C: Other Activities/Locations in order to provide in-scope services via telehealth.

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Drive-Thru Screening-Related Questions

If we are doing a drive through testing clinic, any concerns if the path/driveway/parking lot does not belong to the clinic? Are we in a different site and thus scope is effected?

We have been experimenting with doing “drive by” hemoglobin A1cs for patients who already do home glucose testing. The patient is NOT performing the test, just drawing blood in a similar way to their regular glucose monitor stick, under the direct supervision of the staff member. Any FTCA concerns?

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Hospital Surge-Related Questions

Will a deemed health center's providers remain covered by liability protections under the FTCA if they are directed to provide continuous or permanent services to non-health center inpatients at a local hospital as part of a community-wide emergency response during the declared COVID-19 public health emergency? (Added: 4/16/2020)

Continuous or permanent staffing of a hospital or hospital department to provide inpatient care to all hospital patients is not described by the authorizing statute for the Health Center Program, and FTCA coverage generally is not available for such care.

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Hospital Surge-Related Questions

Health centers have discretion to enter into contractual arrangements with hospitals or may allow their providers to enter into arrangements with hospitals to provide hospital-based inpatient care outside the scope of their Health Center Program grants. **However, FTCA coverage and other federal benefits directly associated with the Health Center Program would not apply.** Providers providing continuous or permanent inpatient care in hospitals through such arrangements **may have medical malpractice liability protection through the hospital or another source, and volunteer providers may be eligible for liability protections under federal and state law (including new legal protections for volunteer providers for COVID-19 emergency response via the CARES Act).** Health centers should consult with private counsel for legal advice regarding these matters.

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Hospital Surge-Related Questions

Please note that the Health Center FTCA Program regulations and the March 27, 2020, Determination of Coverage for COVID-19-Related Activities by Health Center Providers (PDF - 35 KB) provide for FTCA protection for deemed health centers in the circumstances described in those issuances. **The March 27, 2020, Determination of Coverage indicates that health center providers may provide grant-supported health services “to prevent, prepare, or respond to COVID-19 (including but not limited to screening, triage, testing, diagnosis, and treatment)” to individuals who are not patients of the health center, whether at the health center or off-site, and whether in-person or through telehealth.** This determination of coverage extends to local COVID-19 community-wide emergency response activities supported by the health center. The Health Center FTCA Program regulations also provide for liability protections for certain described individual emergency situations.

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Hospital Surge-Related Questions

The Health Center Program provides grant support for the delivery of primary and preventive health care service to medically underserved populations and communities. Services provided through the Health Center Program generally consist of outpatient, ambulatory care services for health center patients. **As provided for by statute, regulation, and determination of coverage, services may be provided to individuals who are not patients of the health center in limited circumstances.**

Other Available Liability Protection

- **Immunity under CARES Act**
 - Volunteers
 - Exceptions for gross negligence, etc.
- **State Law Immunity**
 - Exceptions for gross negligence, etc.
- **Gap Insurance**

Please submit your questions via the Chat box, which can be found on the right of your screen.
Be sure to send to “all participants”.



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RESOURCES

- HRSA Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions:
 - <https://bphc.hrsa.gov/emergency-response/coronavirus-frequently-asked-questions.html#ftca>
- Particularized determination for COVID-19 activities:
 - <https://bphc.hrsa.gov/sites/default/files/bphc/ftca/pdf/COVID19GeneralDeterminationHC.pdf>
- Health Center Program Support HRSA BPHC:
 - 877-464-4772
 - https://bphccommunications.secure.force.com/ContactBPHC/BPHC_Contact_Form
- FTLF Learning Center:
 - <https://learning.ftlf.com>

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RESOURCES

- Federation of State Medical Boards (licensing issues):
 - <https://www.fsmb.org/advocacy/covid-19/>
- AMA (liability protections beyond the FTCA program):
 - <https://www.ama-assn.org/practice-management/sustainability/liability-protections-health-care-professionals-during-covid-19>
- Novel Coronavirus (COVID-19) Information and Resources for Community Health Centers:
 - <http://www.nachc.org/coronavirus/>
- On behalf of HRSA, you have **FREE access to the ECRI Clinical Risk Management Program:**
 - Email clinical_rm_program@ecri.org for access

Thank You!

The presentation, recording, transcript, and resources will be posted on NACHC's resource page hub for COVID-19 related information at <http://www.nachc.org/coronavirus/>

Next COVID-19 & FTCA Office Hour: May 13, 2020

HRSA Health Center Program Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions
<https://bphc.hrsa.gov/emergency-response/coronavirus-frequently-asked-questions.html>
Go to "FTCA Requirements"