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"End of a Pandemic Era: What Now for Federally Qualified Health Centers?" by Abbye Alexander, Christopher Tellner, Talya Van Embden, for Reuters Legal News, 5-2-2023

Reuters - 05.02.23 - End of a pandemic era what now for FQHCs - Alexander - Tellner - Van Embden

The COVID-19 pandemic led to a significant increase in the use of telehealth services across the United States, a shift driven in part by the Public Health Emergency (PHE), allowing health care providers to offer telehealth services to a broader range of patients. On Jan. 30, 2023, the Biden administration announced that it plans to end the COVID-19 PHE on May 11, 2023. As such, Federally Qualified Health Centers (FQHCs) must begin preparing for the end of the PHE to ensure compliance with post-pandemic requirements.

An overview of FQHCs

Federally Qualified Health Centers (FQHC) refer to a type of health care organization that provides primary care services to underserved populations in the United States. FQHCs were first established in 1965 as part of the War on Poverty, with the goal of increasing access to affordable health care in low-income and medically underserved communities. FQHCs are community-based organizations that receive federal funding to provide a range of primary care services, including medical, dental and behavioral health services, to individuals regardless of their ability to pay. These organizations are required to provide services to all individuals in their service area, regardless of their ability to pay, and they must also offer a sliding fee scale based on income to ensure that services are affordable for low-income patients.

FQHCs play a critical role in addressing health care disparities and improving health outcomes for underserved populations. They are typically located in areas with high rates of poverty, limited access to health care, and high rates of chronic health conditions such as diabetes, hypertension and obesity. By providing affordable and accessible primary care services, FQHCs help to prevent and manage chronic health conditions, reduce emergency room visits and hospitalizations, and improve overall health outcomes for the communities they serve. In addition to providing primary care services, FQHCs offer a range of other services and programs to address the social determinants of health, such as housing, transportation and nutrition services. FQHCs are also required to meet certain quality standards and reporting requirements to ensure that they are providing high-quality care and making progress toward improving health outcomes for their patients. Overall, FQHCs are a critical component of the U.S. health care system, serving as a safety net for underserved communities and helping to improve access to affordable, high-quality health care for all.

The Consolidated Appropriations Act

On Dec. 23, 2022, Congress approved a year-end omnibus legislative package, the Consolidated Appropriations Act, 2023 (CAA 2023), which includes 12 fiscal year 2023 appropriation bills and several other provisions, including significant health policy changes. The health care provisions in this omnibus package extend key Medicare telehealth flexibilities and the temporary telehealth safe harbor for High Deductible Health Plan's first-dollar coverage — a type of health insurance policy that covers certain medical expenses before the deductible is met. In other words, the insurance company pays for some health care services without requiring the policyholder to pay anything out-of-pocket. These covered services may include preventive care, such as annual check-ups, flu shots, and mammograms. The temporary telehealth safe harbor for High Deductible Health Plan's first-dollar coverage allows HDHPs to cover telehealth and other remote care services without requiring patients to meet their deductible first.

Historically, Medicare has covered telehealth services in cases where patients were geographically distant from approved providers. However, the coronavirus pandemic prompted the U.S. Secretary of the Department of Health and Human Services to waive certain restrictions regarding coverage and payment for telehealth services during the COVID-19 Public Health Emergency. This, in turn,

increased access to care for Medicare beneficiaries while reducing the risk of exposure to COVID-19.

The previous Consolidated Appropriations Act, 2022 (CAA 2022), which passed in March 2022, extended these flexibilities for 151 days after the end of the PHE. However, stakeholders remained concerned about the potential termination of these flexibilities when the PHE ended and the instability it would cause for patients and providers. The CAA 2023 has addressed these concerns and officially untied the flexibilities from the existence of the PHE. This omnibus bill continues the Medicare telehealth flexibilities for two more calendar years, regardless of the status of the PHE, through Dec. 31, 2024.

FQHCs in a pre- and post-pandemic era

During the PHE, FQHCs have been able to offer telehealth services through interactive real-time audio and video technology, and in some cases, through audio-only technology. These telehealth services have been reimbursed by Medicare under special payment rates developed by the Centers for Medicare & Medicaid Services. However, with the end of the PHE, Medicare payment to FQHCs for telehealth services will largely become unavailable after Dec. 31, 2024. Under the current system, patient homes can be considered an originating site for an FQHC, allowing for telehealth services to be reimbursed under Medicare and Medicaid. However, after Dec. 31, 2024, patients' homes will no longer be eligible originating sites for FQHC-covered telehealth services. FQHCs may serve as the originating site for telehealth services only when located in a rural health professional shortage area or a county that is not included in a metropolitan statistical area. Exceptions to this rule allow the patient's home to be an originating site for patients receiving treatment for substance use disorders and related conditions.

Other more limited Medicare telehealth flexibilities will end earlier for FQHC. For example, on May 11, 2023, FQHCs will no longer be able to bill for virtual communication services without qualifying in-person visits or post-virtual visit conditions, nor allow patient consent to occur at the time of virtual check-ins and e-visits. Additionally, on Dec. 31, 2023, the flexibility allowing FQHCs to utilize interactive audio and video telecommunications technology to meet direct supervision requirements will end.

Regardless, FQHCs will still have more flexibility to furnish mental health services via telehealth after Dec. 31, 2024. Clinical psychologists, clinical social workers, or other FQHC practitioners providing mental health services to patients located at their homes may continue to offer telehealth services subject to certain conditions, such as an in-person mental health visit six months before the telecommunications visit and an in-person mental health visit at least every 12 months during active treatment. FQHCs may also provide mental health services via audio-only technology when the patient is not capable of or does not consent to video technology. Medicaid telehealth reimbursement for FQHCs after the PHE will vary by state. States have more latitude in structuring Medicaid FQHC payments, including whether and how to reimburse FQHCs for the provision of telehealth services. While CMS notes that telehealth flexibilities for Medicaid and the Children's Health Insurance Program are not tied to the end of the PHE, many states have sought emergency state plan amendments to alter telehealth coverage and payment rules during the pandemic.

FQHCs should monitor evolving state legislative actions and Medicaid agency guidance to evaluate how telehealth coverage and reimbursement rules may change in their states after the PHE.
In conclusion, the end of the PHE will have a significant impact on telehealth services provided by FQHCs, particularly with respect to Medicare patients. As such, FQHCs relying on PHE flexibilities should begin preparing for the end of the PHE to ensure compliance with post-pandemic requirements before Dec. 31, 2024.

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