

requirements specified in § 417.436 of this chapter.

(e) If an adult individual is incapacitated at the time of admission or at the start of care and is unable to receive information (due to the incapacitating conditions or a mental disorder) or articulate whether or not he or she has executed an advance directive, then the provider may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The provider is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

[57 FR 8203, Mar. 6, 1992, as amended at 59 FR 45403, Sept. 1, 1994; 60 FR 33294, June 27, 1995; 62 FR 46037, Aug. 29, 1997; 64 FR 67052, Nov. 30, 1999; 68 FR 66720, Nov. 28, 2003]

§ 489.104 Effective dates.

These provisions apply to services furnished on or after December 1, 1991 payments made under section 1833(a)(1)(A) of the Act on or after December 1, 1991, and contracts effective on or after December 1, 1991.

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

Subpart A—Rural Health Clinics: Conditions for Certification; and FQHCs Conditions for Coverage

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AUTHORITY: 42 U.S.C. 263a and 1302.

Subpart A—Rural Health Clinics: Conditions for Certification; and FQHCs Conditions for Coverage

§ 491.1 Purpose and scope.

This subpart sets forth the conditions that rural health clinics or FQHCs must meet in order to qualify for reimbursement under Medicare (title XVIII of the Social Security Act) and that rural health clinics must meet in order to qualify for reimbursement under Medicaid (title XIX of the Act).

[57 FR 24982, June 12, 1992]

§ 491.2 Definitions.

As used in this subpart, unless the context indicates otherwise:

Direct services means services provided by the clinic's staff.

FQHC means an entity as defined in § 405.2401(b).

Nurse practitioner means a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions:

(1) Is currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates; or

(2) Has satisfactorily completed a formal 1 academic year educational program that:

(i) Prepares registered nurses to perform an expanded role in the delivery of primary care;

(ii) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(iii) Awards a degree, diploma, or certificate to persons who successfully complete the program; or

(3) Has successfully completed a formal educational program (for preparing registered nurses to perform an expanded role in the delivery of primary care) that does not meet the requirements of paragraph (2) of this definition, and has been performing an expanded role in the delivery of primary care for a total of 12 months during the

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18-month period immediately preceding the effective date of this subpart.

Physician means the following:

(1) As it pertains to the supervision, collaboration, and oversight requirements in sections 1861(aa)(2)(B) and (aa)(3) of the Act, a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State in which the function is performed; and

(2) Within limitations as to the specific services furnished, a doctor of dental surgery or of dental medicine, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor (see section 1861(r) of the Act for specific limitations).

Physician assistant means a person who meets the applicable State requirements governing the qualifications for assistants to primary care physicians, and who meets at least one of the following conditions:

(1) Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(2) Has satisfactorily completed a program for preparing physician's assistants that:

(i) Was at least 1 academic year in length;

(ii) Consisted of supervised clinical practice and at least 4 months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(iii) Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(3) Has satisfactorily completed a formal educational program (for preparing physician assistants) that does not meet the requirements of paragraph (2) of this definition and assisted primary care physicians for a total of 12 months during the 18-month period that ended on December 31, 1986.

Rural area means an area that is not delineated as an urbanized area by the Bureau of the Census.

Rural health clinic or clinic means a clinic that is located in a rural area designated as a shortage area, is not a rehabilitation agency or a facility primarily for the care and treatment of

mental diseases, and meets all other requirements of this subpart.

Shortage area means a defined geographic area designated by the Department as having either a shortage of personal health services (under section 1302(7) of the Public Health Service Act) or a shortage of primary medical care manpower (under section 332 of that Act).

Secretary means the Secretary of Health and Human Services, or any official to whom he has delegated the pertinent authority.

[71 FR 55345, Sept. 22, 2006, as amended at 79 FR 27156, May 12, 2014]

§ 491.3 Certification procedures.

A rural health clinic will be certified for participation in Medicare in accordance with subpart S of 42 CFR part 405. The Secretary will notify the State Medicaid agency whenever he has certified or denied certification under Medicare for a prospective rural health clinic in that State. A clinic certified under Medicare will be deemed to meet the standards for certification under Medicaid.

[71 FR 55346, Sept. 22, 2006]

§ 491.4 Compliance with Federal, State and local laws.

The rural health clinic or FQHC and its staff are in compliance with applicable Federal, State and local laws and regulations.

(a) *Licensure of clinic or center.* The clinic or center is licensed pursuant to applicable State and local law.

(b) *Licensure, certification or registration of personnel.* Staff of the clinic or center are licensed, certified or registered in accordance with applicable State and local laws.

[57 FR 24982, June 12, 1992]

§ 491.5 Location of clinic.

(a) *Basic requirements.* (1) An RHC is located in a rural area that is designated as a shortage area.

(2) An FQHC is located in a rural or urban area that is designated as either a shortage area or an area that has a medically underserved population.

(3) Both the RHC and the FQHC may be permanent or mobile units.

(i) *Permanent unit.* The objects, equipment, and supplies necessary for the provision of the services furnished directly by the clinic or center are housed in a permanent structure.

(ii) *Mobile unit.* The objects, equipment, and supplies necessary for the provision of the services furnished directly by the clinic or center are housed in a mobile structure, which has fixed, scheduled location(s).

(iii) *Permanent unit in more than one location.* If clinic or center services are furnished at permanent units in more than one location, each unit is independently considered for approval as a rural health clinic or for approval as an FQHC.

(b) *Exceptions.* (1) CMS does not disqualify an RHC approved under this subpart if the area in which it is located subsequently fails to meet the definition of a rural, shortage area.

(2) A private, nonprofit facility that meets all other conditions of this subpart except for location in a shortage area will be certified if, on July 1, 1977, it was operating in a rural area that is determined by the Secretary (on the basis of the ratio of primary care physicians to the general population) to have an insufficient supply of physicians to meet the needs of the area served.

(3) Determinations on these exceptions will be made by the Secretary upon application by the facility.

(c) *Criteria for designation of rural areas.* (1) Rural areas are areas not delineated as urbanized areas in the last census conducted by the Census Bureau.

(2) Excluded from the rural area classification are:

(i) Central cities of 50,000 inhabitants or more;

(ii) Cities with at least 25,000 inhabitants which, together with contiguous areas having stipulated population density, have combined populations of 50,000 and constitute, for general economic and social purposes, single communities;

(iii) Closely settled territories surrounding cities and specifically designated by the Census Bureau as urban.

(3) Included in the rural area classification are those portions of extended

cities that the Census Bureau has determined to be rural.

(d) *Criteria for designation of shortage areas.* (1) The criteria for determination of shortage of personal health services (under section 1302(7) of the Public Health Services Act), are:

(i) The ratio of primary care physicians practicing within the area to the resident population;

(ii) The infant mortality rate;

(iii) The percent of the population 65 years of age or older; and

(iv) The percent of the population with a family income below the poverty level.

(2) The criteria for determination of shortage of primary medical care manpower (under section 332(a)(1)(A) of the Public Health Services Act) are:

(i) The area served is a rational area for the delivery of primary medical care services;

(ii) The ratio of primary care physicians practicing within the area to the resident population; and

(iii) The primary medical care manpower in contiguous areas is overutilized, excessively distant, or inaccessible to the population in this area.

(e) *Medically underserved population.* A medically underserved population includes the following:

(1) A population of an urban or rural area that is designated by PHS as having a shortage of personal health services.

(2) A population group that is designated by PHS as having a shortage of personal health services.

(f) *Requirements specific to FQHCs.* An FQHC approved for participation in Medicare must meet one of the following criteria:

(1) Furnish services to a medically underserved population.

(2) Be located in a medically underserved area, as demonstrated by an application approved by PHS.

CROSS REFERENCE: See 42 CFR 110.203(g) (41 FR 45718, Oct. 15, 1976) and 42 CFR Part 5 (42 FR 1586, Jan. 10, 1978).

[43 FR 5375, Feb. 8, 1978. Redesignated at 50 FR 33034, Aug. 16, 1985, and amended at 57 FR 24982, June 12, 1992; 61 FR 14658, Apr. 3, 1996; 68 FR 74816, Dec. 24, 2003; 71 FR 55346, Sept. 22, 2006]

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§ 491.6 Physical plant and environment.

(a) *Construction.* The clinic or center is constructed, arranged, and maintained to insure access to and safety of patients, and provides adequate space for the provision of direct services.

(b) *Maintenance.* The clinic or center has a preventive maintenance program to ensure that:

(1) All essential mechanical, electrical and patient-care equipment is maintained in safe operating condition;

(2) Drugs and biologicals are appropriately stored; and

(3) The premises are clean and orderly.

[57 FR 24983, June 12, 1992, as amended at 81 FR 64041, Sept. 16, 2016]

§ 491.7 Organizational structure.

(a) *Basic requirements.* (1) The clinic or center is under the medical direction of a physician, and has a health care staff that meets the requirements of § 491.8.

(2) The organization's policies and its lines of authority and responsibilities are clearly set forth in writing.

(b) *Disclosure.* The clinic or center discloses the names and addresses of:

(1) Its owners, in accordance with section 1124 of the Social Security Act (42 U.S.C. 132 A-3);

(2) The person principally responsible for directing the operation of the clinic or center; and

(3) The person responsible for medical direction.

[57 FR 24983, June 12, 1992]

§ 491.8 Staffing and staff responsibilities.

(a) *Staffing.* (1) The clinic or center has a health care staff that includes one or more physicians. Rural health clinic staffs must also include one or more physician's assistants or nurse practitioners.

(2) The physician member of the staff may be the owner of the rural health clinic, an employee of the clinic or center, or under agreement with the clinic or center to carry out the responsibilities required under this section.

(3) The physician assistant, nurse practitioner, nurse-midwife, clinical social worker or clinical psychologist

member of the staff may be the owner or an employee of the clinic or center, or may furnish services under contract to the clinic or center. In the case of a clinic, at least one physician assistant or nurse practitioner must be an employee of the clinic.

(4) The staff may also include ancillary personnel who are supervised by the professional staff.

(5) The staff is sufficient to provide the services essential to the operation of the clinic or center.

(6) A physician, nurse practitioner, physician assistant, certified nurse-midwife, clinical social worker, or clinical psychologist is available to furnish patient care services at all times the clinic or center operates. In addition, for RHCs, a nurse practitioner, physician assistant, or certified nurse-midwife is available to furnish patient care services at least 50 percent of the time the RHC operates.

(b) *Physician responsibilities.* The physician performs the following:

(1) Except for services furnished by a clinical psychologist in an FQHC, which State law permits to be provided without physician supervision, provides medical direction for the clinic's or center's health care activities and consultation for, and medical supervision of, the health care staff.

(2) In conjunction with the physician assistant and/or nurse practitioner member(s), participates in developing, executing, and periodically reviewing the clinic's or center's written policies and the services provided to Federal program patients.

(3) Periodically reviews the clinic's or center's patient records, provides medical orders, and provides medical care services to the patients of the clinic or center.

(c) *Physician assistant and nurse practitioner responsibilities.* (1) The physician assistant and the nurse practitioner members of the clinic's or center's staff:

(i) Participate in the development, execution and periodic review of the written policies governing the services the clinic or center furnishes;

(ii) Participate with a physician in a periodic review of the patients' health records.

(2) The physician assistant or nurse practitioner performs the following functions, to the extent they are not being performed by a physician:

- (i) Provides services in accordance with the clinic's or center's policies;
- (ii) Arranges for, or refers patients to, needed services that cannot be provided at the clinic or center; and
- (iii) Assures that adequate patient health records are maintained and transferred as required when patients are referred.

[57 FR 24983, June 12, 1992, as amended at 61 FR 14658, Apr. 3, 1996; 68 FR 74817, Dec. 24, 2003; 71 FR 55346, Sept. 22, 2006; 79 FR 25480, May 2, 2014; 79 FR 27156, May 12, 2014]

§ 491.9 Provision of services.

(a) *Basic requirements.* (1) All services offered by the clinic or center are furnished in accordance with applicable Federal, State, and local laws; and

(2) The clinic or center is primarily engaged in providing outpatient health services and meets all other conditions of this subpart.

(3) The laboratory requirements in paragraph (c)(2) of this section apply to RHCs, but do not apply to FQHCs.

(b) *Patient care policies.* (1) The clinic's or center's health care services are furnished in accordance with appropriate written policies which are consistent with applicable State law.

(2) The policies are developed with the advice of a group of professional personnel that includes one or more physicians and one or more physician assistants or nurse practitioners. At least one member is not a member of the clinic or center staff.

(3) The policies include:

(i) A description of the services the clinic or center furnishes directly and those furnished through agreement or arrangement.

(ii) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, the maintenance of health care records, and procedures for the periodic review and evaluation of the services furnished by the clinic or center.

(iii) Rules for the storage, handling, and administration of drugs and biologicals.

(4) These policies are reviewed at least biennially by the group of professional personnel required under paragraph (b)(2) of this section and reviewed as necessary by the RHC or FQHC.

(c) *Direct services*—(1) *General.* The clinic or center staff furnishes those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(2) *Laboratory.* These requirements apply to RHCs but not to FQHCs. The RHC provides laboratory services in accordance with part 493 of this chapter, which implements the provisions of section 353 of the Public Health Service Act. The RHC provides basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

- (i) Chemical examinations of urine by stick or tablet method or both (including urine ketones);
- (ii) Hemoglobin or hematocrit;
- (iii) Blood glucose;
- (iv) Examination of stool specimens for occult blood;
- (v) Pregnancy tests; and
- (vi) Primary culturing for transmittal to a certified laboratory.

(3) *Emergency.* The clinic or center provides medical emergency procedures as a first response to common life-threatening injuries and acute illness and has available the drugs and biologicals commonly used in life saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(d) *Services provided through agreements or arrangements.* (1) The clinic or center has agreements or arrangements with one or more providers or suppliers participating under Medicare or Medicaid to furnish other services to its patients, including:

- (i) Inpatient hospital care;
- (ii) Physician(s) services (whether furnished in the hospital, the office, the patient's home, a skilled nursing facility, or elsewhere); and

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(iii) Additional and specialized diagnostic and laboratory services that are not available at the clinic or center.

(2) If the agreements are not in writing, there is evidence that patients referred by the clinic or center are being accepted and treated.

[57 FR 24983, June 12, 1992, as amended at 58 FR 63536, Dec. 2, 1993; 84 FR 51832, Sept. 30, 2019]

§ 491.10 Patient health records.

(a) *Records system.* (1) The clinic or center maintains a clinical record system in accordance with written policies and procedures.

(2) A designated member of the professional staff is responsible for maintaining the records and for insuring that they are completely and accurately documented, readily accessible, and systematically organized.

(3) For each patient receiving health care services, the clinic or center maintains a record that includes, as applicable:

(i) Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient;

(ii) Reports of physical examinations, diagnostic and laboratory test results, and consultative findings;

(iii) All physician's orders, reports of treatments and medications, and other pertinent information necessary to monitor the patient's progress;

(iv) Signatures of the physician or other health care professional.

(b) *Protection of record information.* (1) The clinic or center maintains the confidentiality of record information and provides safeguards against loss, destruction or unauthorized use.

(2) Written policies and procedures govern the use and removal of records from the clinic or center and the conditions for release of information.

(3) The patient's written consent is required for release of information not authorized to be released without such consent.

(c) *Retention of records.* The records are retained for at least 6 years from

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date of last entry, and longer if required by State statute.

(Secs. 1102, 1833 and 1902(a)(13), Social Security Act; 49 Stat. 647, 91 Stat. 1485 (42 U.S.C. 1302, 13951 and 1396a(a)(13)))

[43 FR 30529, July 14, 1978. Redesignated at 50 FR 33034, Aug. 16, 1985, as amended at 57 FR 24984, June 12, 1992]

§ 491.11 Program evaluation.

(a) The clinic or center carries out, or arranges for, a biennial evaluation of its total program.

(b) The evaluation includes review of:

(1) The utilization of clinic or center services, including at least the number of patients served and the volume of services;

(2) A representative sample of both active and closed clinical records; and

(3) The clinic's or center's health care policies.

(c) The purpose of the evaluation is to determine whether:

(1) The utilization of services was appropriate;

(2) The established policies were followed; and

(3) Any changes are needed.

(d) The clinic or center staff considers the findings of the evaluation and takes corrective action if necessary.

[71 FR 55346, Sept. 22, 2006, as amended at 84 FR 51832, Sept. 30, 2019]

§ 491.12 Emergency preparedness.

The Rural Health Clinic/Federally Qualified Health Center (RHC/FQHC) must comply with all applicable Federal, State, and local emergency preparedness requirements. The RHC/FQHC must establish and maintain an emergency preparedness program that meets the requirements of this section. The emergency preparedness program must include, but not be limited to, the following elements:

(a) *Emergency plan.* The RHC or FQHC must develop and maintain an emergency preparedness plan that must be reviewed and updated at least every 2 years. The plan must do all of the following:

(1) Be based on and include a documented, facility-based and community-based risk assessment, utilizing an all-hazards approach.

(2) Include strategies for addressing emergency events identified by the risk assessment.

(3) Address patient population, including, but not limited to, the type of services the RHC/FQHC has the ability to provide in an emergency; and continuity of operations, including delegations of authority and succession plans.

(4) Include a process for cooperation and collaboration with local, tribal, regional, State, and Federal emergency preparedness officials' efforts to maintain an integrated response during a disaster or emergency situation.

(b) *Policies and procedures.* The RHC or FQHC must develop and implement emergency preparedness policies and procedures, based on the emergency plan set forth in paragraph (a) of this section, risk assessment at paragraph (a)(1) of this section, and the communication plan at paragraph (c) of this section. The policies and procedures must be reviewed and updated at least every 2 years. At a minimum, the policies and procedures must address the following:

(1) Safe evacuation from the RHC/FQHC, which includes appropriate placement of exit signs; staff responsibilities and needs of the patients.

(2) A means to shelter in place for patients, staff, and volunteers who remain in the facility.

(3) A system of medical documentation that preserves patient information, protects confidentiality of patient information, and secures and maintains the availability of records.

(4) The use of volunteers in an emergency or other emergency staffing strategies, including the process and role for integration of State and Federally designated health care professionals to address surge needs during an emergency.

(c) *Communication plan.* The RHC or FQHC must develop and maintain an emergency preparedness communication plan that complies with Federal, State, and local laws and must be reviewed and updated at least every 2 years. The communication plan must include all of the following:

(1) Names and contact information for the following:

(i) Staff.

(ii) Entities providing services under arrangement.

(iii) Patients' physicians.

(iv) Other RHCs/FQHCs.

(v) Volunteers.

(2) Contact information for the following:

(i) Federal, State, tribal, regional, and local emergency preparedness staff.

(ii) Other sources of assistance.

(3) Primary and alternate means for communicating with the following:

(i) RHC/FQHC's staff.

(ii) Federal, State, tribal, regional, and local emergency management agencies.

(4) A means of providing information about the general condition and location of patients under the facility's care as permitted under 45 CFR 164.510(b)(4).

(5) A means of providing information about the RHC/FQHC's needs, and its ability to provide assistance, to the authority having jurisdiction or the Incident Command Center, or designee.

(d) *Training and testing.* The RHC or FQHC must develop and maintain an emergency preparedness training and testing program that is based on the emergency plan set forth in paragraph (a) of this section, risk assessment at paragraph (a)(1) of this section, policies and procedures at paragraph (b) of this section, and the communication plan at paragraph (c) of this section. The training and testing program must be reviewed and updated at least every 2 years.

(1) *Training program.* The RHC/FQHC must do all of the following:

(i) Initial training in emergency preparedness policies and procedures to all new and existing staff, individuals providing services under arrangement, and volunteers, consistent with their expected roles,

(ii) Provide emergency preparedness training at least every 2 years.

(iii) Maintain documentation of the training.

(iv) Demonstrate staff knowledge of emergency procedures.

(v) If the emergency preparedness policies and procedures are significantly updated, the RHC/FQHC must conduct training on the updated policies and procedures.

(2) *Testing.* The RHC or FQHC must conduct exercises to test the emergency plan at least annually. The RHC or FQHC must do the following:

(i) Participate in a full-scale exercise that is community-based every 2 years; or

(A) When a community-based exercise is not accessible, an individual, facility-based functional exercise every 2 years; or.

(B) If the RHC or FQHC experiences an actual natural or man-made emergency that requires activation of the emergency plan, the RHC or FQHC is exempt from engaging in its next required full-scale community-based or individual, facility-based functional exercise following the onset of the emergency event.

(ii) Conduct an additional exercise every 2 years, opposite the year the full-scale or functional exercise under paragraph (d)(2)(i) of this section is conducted, that may include, but is not limited to following:

(A) A second full-scale exercise that is community-based or an individual, facility-based functional exercise; or

(B) A mock disaster drill; or

(C) A tabletop exercise or workshop that is led by a facilitator and includes a group discussion, using a narrated, clinically-relevant emergency scenario, and a set of problem statements, directed messages, or prepared questions designed to challenge an emergency plan.

(iii) Analyze the RHC or FQHC's response to and maintain documentation of all drills, tabletop exercises, and emergency events, and revise the RHC or FQHC's emergency plan, as needed.

(e) *Integrated healthcare systems.* If a RHC/FQHC is part of a healthcare system consisting of multiple separately certified healthcare facilities that elects to have a unified and integrated emergency preparedness program, the RHC/FQHC may choose to participate in the healthcare system's coordinated emergency preparedness program. If elected, the unified and integrated emergency preparedness program must do all of the following:

(1) Demonstrate that each separately certified facility within the system actively participated in the development

of the unified and integrated emergency preparedness program.

(2) Be developed and maintained in a manner that takes into account each separately certified facility's unique circumstances, patient populations, and services offered.

(3) Demonstrate that each separately certified facility is capable of actively using the unified and integrated emergency preparedness program and is in compliance with the program.

(4) Include a unified and integrated emergency plan that meets the requirements of paragraphs (a)(2), (3), and (4) of this section. The unified and integrated emergency plan must also be based on and include all of the following:

(i) A documented community-based risk assessment, utilizing an all-hazards approach.

(ii) A documented individual facility-based risk assessment for each separately certified facility within the health system, utilizing an all-hazards approach.

(5) Include integrated policies and procedures that meet the requirements set forth in paragraph (b) of this section, a coordinated communication plan, and training and testing programs that meet the requirements of paragraphs (c) and (d) of this section, respectively.

[81 FR 64041, Sept. 16, 2016, as amended by 84 FR 51832, Sept. 30, 2019]

PART 493—LABORATORY REQUIREMENTS

Subpart A—General Provisions

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