

Sections in 42 CFR that contain collections of information	Current OMB control Nos.
489.24	0938—0334 0938—0663 and 0938—0667
489.102	0938—0610
491.9, 491.10	0938—0334
493.35, 493.37, 493.39, 493.43, 493.45, 493.47, 493.49, 493.51, 493.53, 493.55, 493.60, 493.61, 493.62, 493.63	0938—0612
493.614, 493.633, 494.634 ...	0938—0607
493.801—493.1285, 493.1425, 493.1701, 493.1703, 493.1705, 493.1707, 493.1709, 493.1711, 493.1713, 493.1715, 493.1717, 493.1719, 493.1721, 493.1775, 493.1776, 493.1777, 493.1780, 493.2001	0938—0612
494.52, 494.54, 494.56, 494.58, 494.64	0938—0608
498.22, 498.40, 498.58, 498.82	0938—0508
1004.40, 1004.50, 1004.60, 1004.70	0938—0444

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program, Program No. 93.778, Medical Assistance Program)

Dated: September 22, 1995.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 95-24383 Filed 9-28-95; 8:45 am]

BILLING CODE 4120-01-P

42 CFR Parts 485 and 486

[BPD-836-FC]

Medicare Program—Providers and Suppliers of Specialized Services: Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule makes editorial and clarifying changes in the regulations that pertain to providers and suppliers of specialized services. It also adds a new subpart A to those that pertain to suppliers. These changes are purely technical and have no substantive effect on the Medicare program.

DATES: *Effective date:* This rule is effective as of September 27, 1991.

Comment date: We will consider comments received by November 28, 1995.

ADDRESSES: Please mail original and 3 copies of your comments to the following address: Health Care

Financing Administration, Department of Health and Human Services, Attention: BPD-836-FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver original and 3 copies of your comments to either of the following addresses:

Room 309-G, 200 Independence Avenue, SW, Washington, DC 20201
Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-836-FC.

Written comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of the document, in room 309G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, Monday through Friday, from 8:30 a.m. to 5 p.m. (Phone: (202) 690-7890).

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 690-6383.

SUPPLEMENTARY INFORMATION: On January 9, 1995, we published a technical regulation identified as BPD-798-FC (at 60 FR 2325) to reorganize the HCFA regulations that pertain to specialized services. The rules that pertain to specialized services furnished by providers were redesignated under part 485, and the rules that pertain to specialized services furnished by suppliers were redesignated under a new part 486. As explained in the preamble to BPD-798-FC, regulations on organ procurement organizations (OPOs) and on screening mammographies were not relocated to part 486 because they were in the process of undergoing substantive changes.

No comments were received on the January 9 publication. However, for reasons indicated below, we need to make changes in parts 485 and 486.

The final rules on OPOs have been delayed. To ensure that in the October 1, 1995 edition of the Code of Federal Regulations the current rules on OPOs (which are not providers) appear in the appropriate part, we are redesignating them as subpart G of part 486.

The rules on mammographies have been redesignated under § 410.34 of the HCFA regulations and that section specifies that certain Food and Drug Administration rules also apply.

We are adding a new "Basis and scope" section to part 486. One purpose of the new section is to inform the reader of where the conditions for

coverage for other specialized services furnished by suppliers are to be found.

This rule also—

- Clarifies and simplifies 3 definitions in part 485;
- Provides uniform heading format for all sections of redesignated subpart G and revises some of those headings; and
- Corrects internal cross-references as required by the redesignations.

Collection of Information Requirements

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Waiver of Proposed Rulemaking and Delayed Effective Date

The changes made by this rule are purely technical and editorial and have no substantive impact. Accordingly, we find that there is good cause to waive proposed rulemaking procedures as unnecessary.

In addition, it is important, for the convenience of the public, that these changes be effective as of October 1, 1995, so that they will appear in the 1995 edition of the Code of Federal Regulations on which the public relies. Accordingly, we find that there is also good cause to waive the usual 30-day delay in the effective date.

Response to Comments

Although this is a final rule, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally changed the substance of the regulations. Although we cannot respond to comments individually, if we revise this rule as a result of comments, we will discuss all timely comments in the preamble to the revised rule.

Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule unless we can certify that the particular rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also

consider all providers and suppliers to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is not located in a Metropolitan Statistical Area.

We have not prepared a regulatory flexibility analysis because we have determined and we certify that this rule (which makes only technical and editorial changes) will not have a significant economic impact on a substantial number of small entities nor a significant impact on the operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 486

Health professionals, Medicare, Organ procurement, X-rays.

42 CFR Chapter IV is amended as set forth below.

PART 485—CONDITIONS OF PARTICIPATION; PROVIDERS OF SPECIALIZED SERVICES

A. Part 485 is amended as set forth below.

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§§ 485.301 through 485.309 and 485.311 [Redesignated]

2. Subpart D of part 485, consisting of §§ 485.301 through 485.309 and 485.311, is redesignated as subpart G of part 486 in accordance with the following redesignation table:

Old section (subpart D of part 485)	New section (subpart G of part 486)
485.301	486.301
485.302	486.302
485.303	486.304
485.304	486.306
485.305	486.308
485.306	486.310
485.307	486.314
485.308	486.316
485.309	486.318
485.311	486.325

3. Section 485.703 is amended to revise the definitions of “clinic”, “rehabilitation agency”, and “supervision”, to read as follows:

§ 485.703 Definitions.

Clinic. A facility that is established primarily to furnish outpatient physician services and that meets the following tests of physician involvement:

(1) The medical services are furnished by a group of three or more physicians practicing medicine together.

(2) A physician is present during all hours of operation of the clinic to furnish medical services, as distinguished from purely administrative services.

* * * * *

Rehabilitation agency. An agency that—

(1) Provides an integrated multidisciplinary rehabilitation program designed to upgrade the physical functioning of handicapped disabled individuals by bringing specialized rehabilitation staff together to perform as a team; and

(2) Provides at least the following services:

(i) Physical therapy or speech-language pathology services.

(ii) Social or vocational adjustment services.

Supervision. Authoritative procedural guidance that is for the accomplishment of a function or activity and that—

(1) Includes initial direction and periodic observation of the actual performance of the function or activity; and

(2) Is furnished by a qualified person—

(i) Whose sphere of competence encompasses the particular function or activity; and

(ii) Who (unless otherwise provided in this subpart) is on the premises if the person performing the function or activity does not meet the assistant-level practitioner qualifications specified in § 485.705.

4. In the following sections, the section heading is amended to change the dash to a colon and to capitalize the first word after the colon:

§§ 485.709, 485.713, 485.717, 485.719, and 485.725.

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

B. Part 486 is amended as set forth below.

1. The heading of part 486 is revised to read as set forth above.

2. The authority citation for part 486 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

3. A new subpart A is added, to read as follows:

Subpart A—General Provisions

Sec.

486.1 Basis and scope.

§ 486.1 Basis and scope.

(a) *Statutory basis.* This part is based on the following sections of the Act:

1138(b)—for coverage of organ procurement services.

1861(p)—for coverage of outpatient physical therapy services furnished by physical therapists in independent practice.

1861(s) (3), (15), and (17)—for coverage of portable X-ray services.

(b) *Scope.* (1) This part sets forth the conditions for coverage of certain specialized services that are furnished by suppliers and that are not specified in other portions of this chapter.

(2) The conditions for coverage of other specialized services furnished by suppliers are set forth in the following regulations which, unless otherwise indicated, are part of this chapter:

(i) Ambulatory surgical center (ASC) services—Part 416.

(ii) Ambulance services—Part 410, subpart B.

(iii) ESRD services—Part 405, subpart U.

(iv) Laboratory services—Part 493.

(v) Mammography services—Part 410, subpart B (§ 410.34) and 21 CFR Part 900, subpart B, of the Food and Drug Administration regulations.

(vi) Rural health clinic and Federally qualified health center services—Part 491, subpart A.

§ 486.110 [Amended]

4. In § 486.110(b), “outlined in § 405.1415.” is revised to read “outlined in § 486.108.”.

5. Subparts E and F are added and reserved.

6. In newly designated subpart G, the headings of the specified sections are revised to read as follows:

- § 486.304 **General requirements.**
- § 486.306 **Qualifications for designation as an OPO.**
- § 486.308 **Condition: Participation in organ procurement and transplantation network.**
- § 486.310 **Condition: Adherence to performance standards.**
- § 486.314 **Effect of failure to meet requirements.**
- § 486.325 **Termination of agreement with HCFA.**

7. In newly designated subpart G, all references to the section numbers listed in the following left-hand column are corrected to read as shown in the right-hand column:

Sec.	Sec.
485.303	486.304
485.304	486.306
405.305	486.308
485.306	486.310
485.309	486.318

The references that are being corrected appear in the following sections: §§ 486.302, 486.304(b)(3) and (b)(5) through (b)(7), 486.314, 486.316 introductory text, and 486.318(b).

(Catalog of Federal Domestic Assistance Program No. 93-773, Medicare—Hospital Insurance, and No. 93-774, Medicare—Supplementary Medical Insurance)

Dated: September 11, 1995

Bruce C. Vladeck
Administrator, Health Care Financing Administration.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460, 5510, 9230, and 9260

[WO-230-6310-02-24 1A; Circular No. 2660]

RIN 1004-AB97

Free Use of Timber: General; Trespass; Law Enforcement: Criminal

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the existing Bureau of Land Management (BLM) regulations on timber trespass. The rule edits the existing regulations to make them more orderly and easier to read, and adds a list of prohibited acts necessary to

provide guidance concerning the administration of forest product contracts and free use permits, and law enforcement.

EFFECTIVE DATE: October 30, 1995.

ADDRESSES: Suggestions or inquiries should be sent to Director (230), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bob Bierer, (202) 452-7755.

SUPPLEMENTARY INFORMATION: The BLM published a proposed rule on timber trespass in the Federal Register on September 13, 1993 (58 FR 47847), requesting comments by November 12, 1993. During the 60-day comment period, comments were received from 3 forest industry associations. The comments are discussed in the same sequence as the sections of the proposed rule. Many of the suggestions were adopted and are reflected in the final rule.

The rule is a continuation of the effort to provide more effective control of trespass of timber and other vegetative resources on public lands. It provides further guidance to supplement the final rule published on March 11, 1991 (56 FR 10173), and includes specific prohibited acts to which BLM law enforcement personnel can refer to in issuing citations.

General Comments

The three comments noted in support of the proposed rule that theft of any timber is a serious matter and there is continued support for strong law enforcement activities, including prosecution of any person found guilty of stealing federal timber.

The law enforcement and resource protection program of the BLM is quite often involved in detecting and resolving trespasses against and thefts of timber and other vegetative resources. Uncertainty in prohibited acts or applicable penalties often causes their efforts to obtain criminal prosecution to be unsuccessful. The prohibited acts set forth in this rule will enhance law enforcement actions and serve as a deterrent to future trespass.

One comment suggested that a timber contract should allow sufficient flexibility to assure that the objectives of both parties are satisfied, especially when circumstances arise that were unforeseen at the time of contract formation. That is the intent of this final rule.

Comments on Amendment of 43 CFR Part 5460

Two comments stated that the prohibited acts relate only to BLM-

administered lands and that the final rule should clearly state this limitation. The language in § 5462.2(a) has been amended to clarify this point.

Another comment suggested deletion of the phrase "See § 9239.1 of this title for trespass and subpart 9265 of this title for criminal prosecution" from 5462.2(a). The comment has been adopted. The cross-reference is rendered unnecessary by the addition of the penalty provision at § 5462.2(c).

A comment suggested that the language in § 5462.2(b)(1) is ambiguous as to what may constitute "otherwise damaging any timber" and suggested that additional specific criteria as to what constitutes "damage" be developed to avoid arbitrary and inconsistent on-the-ground decisions. The prework conference required prior to commencement of operations provided for in the BLM Timber Sale Procedure Handbook is designed to discuss and clarify concerns such as this, and, in the context of cutting and removing timber, we do not consider "otherwise damaging any timber" to be ambiguous. The comment was not adopted.

On § 5462.2(b)(2), the comments pointed out that while it is proper in most situations to require a BLM employee to mark or designate all standing timber before it can be cut, there are instances where a logger has conflicting direction from two different Federal agencies or regulations. For example, Occupational Safety and Health Act (OSHA) regulations require operators to fell any tree constituting a hazard to safe working conditions immediately, and failure to do so may subject them to a fine. The only option available to the operator is to leave the area until a BLM employee arrives and designates the tree for felling, which is impractical for both parties. The comments noted that some allowance needs to be made for safety, or the agency must guarantee timely timber sale administration. Again, prework conferences are intended to resolve potential conflicts and procedural problems such as this, and the comments were not adopted in the final rule.

Three comments recommended removing § 5462.2(b)(3), because BLM no longer offers scaled sales. The comments were not adopted since this prohibited act is intended primarily for small salvage and firewood sales, and the BLM may occasionally offer scaled salvage timber sales where appropriate to harvest dead timber promptly to preclude excessive deterioration.

Three comments suggested that § 5462.2(b)(4) should be changed to