

sanction is at least 30 days after the date of the notice.

(b) *Appeal rights.* Termination of Medicare coverage of a supplier's ESRD services because the supplier no longer meets the conditions for coverage of its services is an initial determination appealable under part 498 of this chapter.

[53 FR 36277, Sept. 19, 1988]

§ 405.2184 Notice of appeal rights: Alternative sanctions.

If CMS proposes to apply a sanction specified in § 405.2181(b), the following rules apply:

(a) CMS gives the facility notice of the proposed sanction and 15 days in which to request a hearing.

(b) If the facility requests a hearing, CMS provides an informal hearing by a CMS official who was not involved in making the appealed decision.

(c) During the informal hearing, the facility—

- (1) May be represented by counsel;
- (2) Has access to the information on which the allegation was based; and
- (3) May present, orally or in writing, evidence and documentation to refute the finding of failure to participate in network activities and pursue network goals.

(d) If the written decision of the informal hearing supports application of the alternative sanction, CMS provides the facility and the public, at least 30 days before the effective date of the sanction, with a written notice that specifies the effective date and the reasons for the sanction.

[53 FR 36277, Sept. 19, 1988]

Subparts V–W [Reserved]

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

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

SOURCE: 43 FR 8261, Mar. 1, 1978, unless otherwise noted.

§ 405.2400 Basis.

Subpart X is based on the provisions of the following sections of the Act:

Section 1833 sets forth the amounts of payment for supplementary medical insurance services. Section 1861(aa) sets forth the rural health clinic services and Federally qualified health center services covered by the Medicare program.

[60 FR 63176, Dec. 8, 1995]

§ 405.2401 Scope and definitions.

(a) *Scope.* This subpart establishes the requirements for coverage and reimbursement of rural health clinic and Federally qualified health center services under Medicare.

(b) *Definitions.* As used in this subpart, unless the context indicates otherwise:

Act means the Social Security Act.

Allowable costs means costs that are incurred by a clinic or center and are reasonable in amount and proper and necessary for the efficient delivery of rural health clinic and Federally qualified health center services.

Beneficiary means an individual enrolled in the Supplementary Medical Insurance program for the Aged and Disabled (part of title XVIII of the Act).

Coinsurance means that portion of the clinic's charge for covered services for which the beneficiary is liable in addition to the deductible.

Carrier means an organization that has a contract with the Secretary to administer the benefits covered by this subpart.

Covered services means items or services for which the beneficiary is entitled to have payment made on his or her behalf under this subpart.

Deductible means:

(1) The first \$100 of expenses incurred by the beneficiary during any calendar year for items and services covered under Part B of title XVIII; and

(2) The expenses incurred for the first 3 pints of blood or 3 units of packed red blood cells furnished to a beneficiary during any calendar year. (See §§ 410.160 and 410.161 of this chapter for greater detail.)

Federally qualified health center (FQHC) means an entity that has entered into an agreement with CMS to meet Medicare program requirements under §§ 405.2434 and—

(1) Is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 329, 330 or 340 of the Public Health Service Act;

(2) Based on the recommendation of the PHS, is determined by CMS to meet the requirements for receiving such a grant;

(3) Was treated by CMS, for purposes of part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990; or

(4) Is an outpatient health program or facility operated by a tribe or tribal organizations under the Indian Self-Determination Act or by an Urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.

CMS stands for Centers for Medicare & Medicaid Services.

Intermittent nursing care means a medically predictable need for nursing care from time to time, but usually not less frequently than once every 60 days.

Nurse-midwife means a registered professional nurse who meets the following requirements:

(1) Is currently licensed to practice in the State as a registered professional nurse.

(2) Is legally authorized under State law or regulations to practice as a nurse-midwife.

(3) Except as provided in paragraph (b)(10)(iv) of this section, has completed a program of study and clinical experience for nurse-midwives, as specified by the State.

(4) If the State does not specify a program of study and clinical experience that nurse-midwives must complete to practice in that State, meets one of the following conditions:

(i) Is currently certified as a nurse-midwife by the American College of Nurse-Midwives.

(ii) Has satisfactorily completed a formal education program (of at least one academic year) that, upon completion, qualifies the nurse to take the certification examination offered by the American College of Nurse-Midwives.

(iii) Has successfully completed a formal educational program for preparing registered nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the postpartum period, and care to normal newborns, and was practicing as a nurse-midwife for a total of 12 months during any 18-month period from August 8, 1976 to July 16, 1982.

Nurse practitioner and *physician assistant* means individuals who meet the applicable education, training experience and other requirements of § 491.2 of this chapter.

Part-time nursing care means nursing care that is required on less than a full-time basis, that is, less than 8 hours a day or 40 hours a week.

Physician means the following:

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed.

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

(3) A resident (including residents as defined in § 415.152 of this chapter who meet the requirements in § 415.206(b) of this chapter for payment under the physician fee schedule).

Reporting period means a period of 12 consecutive months specified by the intermediary as the period for which a clinic or center must report its costs and utilization. The first and last reporting periods may be less than 12 months.

Rural health clinic means a facility that:

(1) Has been determined by the Secretary to meet the requirements of section 1861(aa)(2) of the Act and part 491 of this chapter; and

(2) Has filed an agreement with the Secretary in order to provide rural health clinic services under Medicare. (See § 405.2402.)

Secretary means the Secretary of Health and Human Services or his delegate.

Visiting nurse services means part-time or intermittent nursing care and related medical supplies (other than

drugs or biologicals) furnished by a registered nurse or licensed practical nurse to a homebound patient.

(Secs. 1102, 1833, 1861(aa), 1871, 1902(a)(13), Social Security Act; 49 Stat. 647, 79 Stat. 302, 322, and 331, 91 Stat. 1485 (42 U.S.C. 1302, 1395f, 1395hh, 1395x(aa), and 1396(a)(13))

[43 FR 8261, Mar. 1, 1978, as amended at 43 FR 30526, July 14, 1978; 47 FR 21049, May 17, 1982; 47 FR 23448, May 28, 1982; 51 FR 41351, Nov. 14, 1986; 57 FR 24975, June 12, 1992; 59 FR 26958, May 25, 1994; 60 FR 63176, Dec. 8, 1995; 61 FR 14657, Apr. 3, 1996; 69 FR 74815, Dec. 24, 2003; 71 FR 55345, Sept. 22, 2006]

§ 405.2402 Basic requirements.

(a) *Certification by the State survey agency.* The rural health clinic must be certified in accordance with part 491 of this chapter.

(b) *Acceptance of the clinic as qualified to furnish rural health clinic services.* If the Secretary, after reviewing the survey agency recommendation and other evidence relating to the qualifications of the rural health clinic, determines that it meets the requirements of this subpart and of part 491 of this chapter, he will send the clinic:

(1) Written notice of the determination; and

(2) Two copies of the agreement to be filed as required by section 1861(aa)(1) of the Act.

(c) *Filing of agreement by the rural health clinic.* If the rural health clinic wishes to participate in the program, it must:

(1) Have both copies of the agreement signed by an authorized representative; and

(2) File them with the Secretary.

(d) *Acceptance by the Secretary.* If the Secretary accepts the agreement filed by the rural health clinic, he will return to the clinic one copy of the agreement, with a notice of acceptance specifying the effective date.

(e) *Duration of agreement.* The agreement shall be for a term of one year and may be renewed annually by mutual consent of the Secretary and the rural health clinic.

(f) *Appeal rights.* If the Secretary does not certify a rural health clinic, or refuses to enter into or renew an agreement, the facility is entitled to a hear-

ing in accordance with part 498 of this chapter.

[43 FR 8261, Mar. 1, 1978, as amended at 52 FR 22454, June 12, 1987]

§ 405.2403 Content and terms of the agreement with the Secretary.

(a) Under the agreement, the rural health clinic agrees to the following:

(1) *Maintaining compliance with conditions.* The clinic agrees to maintain compliance with the conditions set forth in part 491 of this chapter and to report promptly to CMS any failure to do so.

(2) *Charges to beneficiaries.* The clinic agrees not to charge the beneficiary or any other person for items and services for which the beneficiary is entitled to have payment made under the provisions of this part (or for which the beneficiary would have been entitled if the rural health clinic had filed a request for payment in accordance with § 410.165 of this chapter), except for any deductible or coinsurance amounts for which the beneficiary is liable under § 405.2410.

(3) *Refunds to beneficiaries.* (i) The clinic agrees to refund as promptly as possible any money incorrectly collected from beneficiaries or from someone on their behalf.

(ii) As used in this section, *money incorrectly collected* means sums collected in excess of the amount for which the beneficiary was liable under § 405.2410. It includes amounts collected at a time when the beneficiary was believed not to be entitled to Medicare benefits but:

(A) The beneficiary is later determined to have been entitled to Medicare benefits; and

(B) The beneficiary's entitlement period falls within the time the rural health clinic's agreement with the Secretary is in effect.

(4) *Beneficiary treatment.* (i) The clinic agrees to accept beneficiaries for care and treatment; and

(ii) The clinic agrees not to impose any limitations on the acceptance of beneficiaries for care and treatment that it does not impose on all other persons.

(b) *Additional provisions.* The agreement may contain any additional provisions that the Secretary finds necessary or desirable for the efficient and