

Guidance Specifically for Rural Health Clinics and Federally-Qualified Health Centers During the COVID-19 Pandemic

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Rural health clinics (RHCs) and federally qualified health centers (FQHCs) are among the health care providers that stand to benefit from the monetary and regulatory assistance the federal government aims to provide through two recent actions. These actions are: (1) Congressional passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and (2) a declaration by the Centers for Medicare and Medicaid Services (CMS) that during the COVID-19 public health emergency it will waive many of its standard regulatory requirements. The CARES Act increases the amount and accessibility of money available to providers, while CMS's declaration of blanket waivers for certain regulatory requirements provides operational flexibility for health care providers during the public health emergency. This article summarizes the ways in which RHCs and FQHCs, in particular, may benefit from each of these federal relief initiatives.

- **The CARES Act.**
  - **Grant Money.** Section 4214 of the CARES Act modifies 42 USC 254c to expand access to, and increase the amount of, federal grants available to rural health providers.
    - Rural health care services outreach grants have been modified as follows:
      - Grants may be issued for periods of up to 5 years rather than 3 years per the prior version of the rule.
      - Applicant eligibility is no longer limited to rural public and rural nonprofit private entities. Now, a grant applicant simply needs

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to be "an entity with demonstrated experience serving, or the capacity to serve, rural underserved populations."

- Rural health network development grants have been modified as follows:
    - Grants may be awarded to expand access to, coordinate and improve the quality of "basic health care services and associated health outcomes" rather than just "essential health care services."
    - Grants may be issued for a period of up to 5 years. Previously the limit was 3 years or, for proposed participants who "do not have a history of collaborative efforts," just 1 year.
    - Applicant eligibility is no longer limited to rural public and rural nonprofit private entities. Now, an applicant simply needs to be "an entity with demonstrated experience serving, or the capacity to serve, rural underserved populations."
- The total amount authorized to be appropriated to carry out 42 USC 254c was increased to $79,500,000 for each fiscal year from 2021 through 2025. Previously, it was $45,000,000 for each of fiscal years 2008 through 2012.

- **Use of Telehealth.** Section 4405 of the CARES Act modifies 42 USC 1395m(m) to expand the ability of FQHCs and RHCs to use and charge for telehealth services.
    - Previously, an "eligible telehealth individual" had to be physically on-site at an RHC or FQHC when receiving telehealth services (from a provider at another location, the "distant site") in order for the services to be reimbursable as telehealth services

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by the Secretary of Health and Human Services (the "Secretary"). Under the revised law, an FQHC or RHC may be reimbursed for telehealth services it provides as a distant-site provider to an eligible telehealth individual who is receiving the services in his or her own home or another location.

- A couple of special payment rules will apply to the expanded use of telehealth services provided for in Section 4405 of the CARES Act:
    - The Secretary has been directed to develop, and implement payment methods that apply to an FQHC or RHC that serves as a distant site furnishing telehealth services during the public health emergency. The CARES Act dictates that: "Such payment methods shall be based on payment rates that are similar to the national average payment rates for comparable telehealth services under the physician fee schedule under section 1848."
    - The costs associated with telehealth services will not be used to determine the amount of payment for FQHC services under the prospective payment system or for RHC services under the methodology for all-inclusive rates.

- **CMS Waivers for RHCs and FQHCs.**
    - **Certain Staffing Requirements.** In order to help ease staffing shortages during the COVID-19 health emergency, CMS is waiving the requirement in the second sentence of 42 CFR 491.8(a)(6) that a nurse practitioner, physician assistant, or certified nurse-midwife be available to furnish patient care services at least 50 percent of the time an RHC operates. Providers should note that CMS is *not* waiving the first sentence

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of § 491.8(a)(6) that requires a physician, nurse practitioner, physician assistant, certified nurse-midwife, clinical social worker, or clinical psychologist to be available to furnish patient care services at all times an RHC or FQHC operates.

- **Physician Supervision of NPs**. In order to help RHCs and FQHCs to make the most effective use of their nurse practitioners and physicians, CMS is partially waiving the requirement at 42 CFR 491.8(b)(1) that a physician must provide medical supervision of all of the clinic's or center's health care staff. CMS is waiving the requirement of physician supervision solely with respect to nurse practitioners (not any other health care staff), and only to the extent that applicable state law allows nurse practitioners to provide services without physician supervision. A physician must continue to provide medical supervision of the other health care staff, and must remain available to nurse practitioners, either in person or through remote communications, to provide medical direction and consultation.

For more information please contact Rhonda Schechter or any attorney in Frost Brown Todd's Health Care Innovation Industry Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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