

# MEMORANDUM

Texas Department of Human Services \* Long Term Care/Policy

**TO:** LTC-R Regional Directors  
Section/Unit Managers

**FROM:** Marc Gold  
Section Manager  
Long Term Care-Policy  
State Office MC: W-519

**SUBJECT:** Regional Survey & Certification Letter #00-16

**DATE:** July 21, 2000

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The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 00-16 -- Waiver of Midlevel Practitioner Requirements for Rural Health Clinics Located on an Island; Call Beverly Tucker, Section Manager, professional Services at (512) 438-2631.

If you have any questions, please direct inquiries to the individuals or sections listed above.

~Original Signature on File~

Marc Gold

Attachment

**DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**Health Care Financing Administration**  
Division of Medicaid and State Operations, Region VI

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1301 Young Street, Room 833  
Dallas, Texas 75202  
Phone (214) 767-6301  
Fax (214) 767-0270

June 20, 2000

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 00-16

To: All State Survey Agencies (Information)  
All Title XIX Single State Agencies (Information)

Subject: Waiver of Midlevel Practitioner Requirements for Rural Health Clinics Located on an Island

We have received a number of inquiries concerning the waiver of midlevel practitioners for rural health clinics located on an island and the definition of an island. There are also concerns that the amended waiver provision in the Balanced Budget Act of 1997 (BBA) may have superseded the Omnibus Budget Reconciliation Act of 89 (OBRA) midlevel practitioner waiver exception for rural health clinics located on an island.

Section 6213(f) of OBRA '89 provided a freestanding exception to allow certification of a RHC on an island that would otherwise be qualified to be certified as such a facility but for the requirement that the services of a midlevel practitioner be provided in the facility. The midlevel practitioner waiver exception for rural health clinics located on an island is still in effect. An island is defined as any body of land completely surrounded by water, regardless of its size and connections such as bridges, etc. HCFA, assisted by the State, will make island determinations when it becomes necessary to apply the exception.

The changes in rural health clinic waiver provisions enacted by the BBA do not affect RHCs located on an island. According to our Office of General Counsel, the original provision concerning island-based RHCs, in section 6213(f) of OBRA '89 did not actually amend 1861(aa)(2) which contained a separate waiver provision, nor did it create a waiver. Instead, it provided a freestanding exception. Section 1861(aa)(2) contained a separate waiver provision. Thus, while section 4205(c) of the BBA amended the waiver provisions of 1866 (aa)(2), it did not affect the non-waiver exception created by 6213(f) of OBRA '89.

If you have further questions, please contact Jann Caldwell, of my staff,

Sincerely,

~Signature on File~

Molly Crawshaw, Chief  
Survey and Certification Operations Branch

Enclosure

Social Security Act [§1861 pp 850-852](#) (*scroll down to "Rural Health Clinic Services and Federally Qualified Health Center Services "*)  
OBRA'89 pp 153&154

**NOTE:** This is a computer-generated copy of the xeroxed attachment to the RS&C Letter from HCFA (it is verbatim including the portion of subsection shown at the beginning of the attachment)

fective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization that the organization is not in compliance with the requirements of section 1876(c)(6) of such Act. "

**(b) LIMIT ON CHARGES FOR EMERGENCY SERVICES AND OUT-OF-AREA COVERAGE. -**

*(1) IN GENERAL. - Section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subsection:*

"(j)(1)(A) In the case of physicians' services described in paragraph (2) which are furnished by a participating physician to an individual enrolled with an eligible organization under this section and enrolled under part B, the participation agreement under section (1842(h)(1) is deemed to provide that the physician will accept as payment in full from the eligible organization the amount that would be payable to the physician under part B and from the individual under such part, if the individual were not enrolled with an eligible organization under this section.

"(B) In the case of physicians' services described in paragraph (2) which are furnished by a nonparticipating physician, the limitations on actual charges for such services otherwise applicable under part B (to services furnished by individuals not enrolled with an eligible organization under this section) shall apply in the same manner as such limitations apply to services furnished to individuals not enrolled with such an organization.

*"(2) The physicians' services described in this paragraph are physicians' services which -*

*"(A) are emergency services or out-of-area coverage (described in clauses (iii) and (iv) of subsection (b)(2)(A)), and*

*"(B) are furnished to an enrollee of an eligible organization under this section by a person who is not under a contract with the organization. "*

*(2) EFFECTIVE DATE. - The amendment made by paragraph (1) shall apply to services furnished on or after April 1, 1990.*

**(c) MAKING AUTHORITY FOR BENEFIT STABILIZATION FUND PERMANENT. -**

*(1) REPEAL ON LIMITATION ON ESTABLISHMENT OF A FUND. - Section 2350(b) of the Deficit Reduction Act of 1984 (Public Law 98-369) is amended by striking paragraphs (3) and (4).*

*(2) REPEAL ON LIMITING PERIOD OF USE. - Section 1876(g)(5) of the Social Security Act 142 U.S.C. 1395mm(g)(5) is amended by striking "and during a period of not longer than four years. "*

(3) *EFFECTIVE DATE.* - *The amendments made by this subsection shall take effect on the date of the enactment of this Act.*

**SEC. 6213. RURAL HEALTH CLINIC SERVICES.**

(a) *STAFFING REQUIREMENTS; INCLUSION OF NURSE-MIDWIFE SERVICES.* - *Section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2) is amended -*

(1) *by striking "; and " at the end of subparagraph (I) and inserting a semicolon;*

(2) *by redesignating subparagraph (J) as subparagraph (K); and*

(3) *by inserting after subparagraph (I) the following new subparagraph:*

*"(J) has a nurse practitioner, a physician assistant, or a certified nurse-midwife (as defined in subsection (gg)) available to furnish patient care services not less than 50 percent of the time the clinic operates, and "*

(b) *COVERAGE OF SOCIAL WORKER SERVICES.* - *Section 1861(aa)(1)(B) of such Act (42 U.S.C. 1395x(aa)(1)(B)) is amended -*

(1) *by striking "or " before "by "; and*

(2) *by inserting "or by a clinical social worker (as defined in subsection (hh)(1)) " after "Secretary) ".*

(c) *EXPANSION OF ELIGIBLE AREAS.* - *The second sentence of section 1861(aa)(2) of such Act is amended -*

(1) *by striking "designated by the Secretary " and inserting "designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services, or that is designated by the Secretary ";*

(2) *by striking "section 1302(7) of the Public Health Service Act or " and inserting "sections 330(b)(3) or 1302(7) of the Public Health Service Act, "; and*

(3) *by striking "medical care manpower, " and inserting the following: "medical care manpower, (III) as a high impact area described in section 329(a)(5) of that Act, or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act, ".*

(d) *EFFECTIVE DATE.* - *The amendments made by subsections (a) through (c) of this section shall take effective October 1, 1989.*

(e) *DISSEMINATION OF RURAL HEALTH CLINIC INFORMATION.* -

*(1) IN GENERAL. - Not later than 60 days after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Director of the Office of Rural Health Policy, shall disseminate to health care facilities and to the chief executive officer, chief health officer, and chief human services officer of each State, applications and other necessary information to enable such a facility to apply for designation as a rural health clinic for the purposes of titles XVIII and XIX of the Social Security Act.*

*(2) DEFINITIONS. - For purposes of this subsection:*

*(A) The term "health care facility " means a community health center or a migrant health center, or a hospital, home health agency, or skilled nursing facility participating in a program established under title XVIII or title XIX of the Social Security Act.*

*(B) The term "State " includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. (f) TREATMENT OF CERTAIN FACILITIES AS RURAL HEALTH CLINICS. - The Secretary of Health and Human Services shall not deny certification of a facility as a rural health clinic under section 1861(aa)(2) of the Social Security Act if the facility is located on an island and would otherwise be qualified to be certified as such a facility but for the requirement that the services of a physician assistant or nurse practitioner be provided in the facility.*