SESSION 3: RHC COMPLIANCE UPDATE

inQuiseek Consulting

Nebraska Rural Health Clinic Workshop

May 25, 2022

COVID VACCINE MANDATE CHANGES TO 42 CFR 491.8(d)

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-22-09-ALL

DATE: **January 14, 2022**

TO: State Survey Agency Directors

FROM: Directors
Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)

SUBJECT: Guidance for the Interim Final Rule - Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination

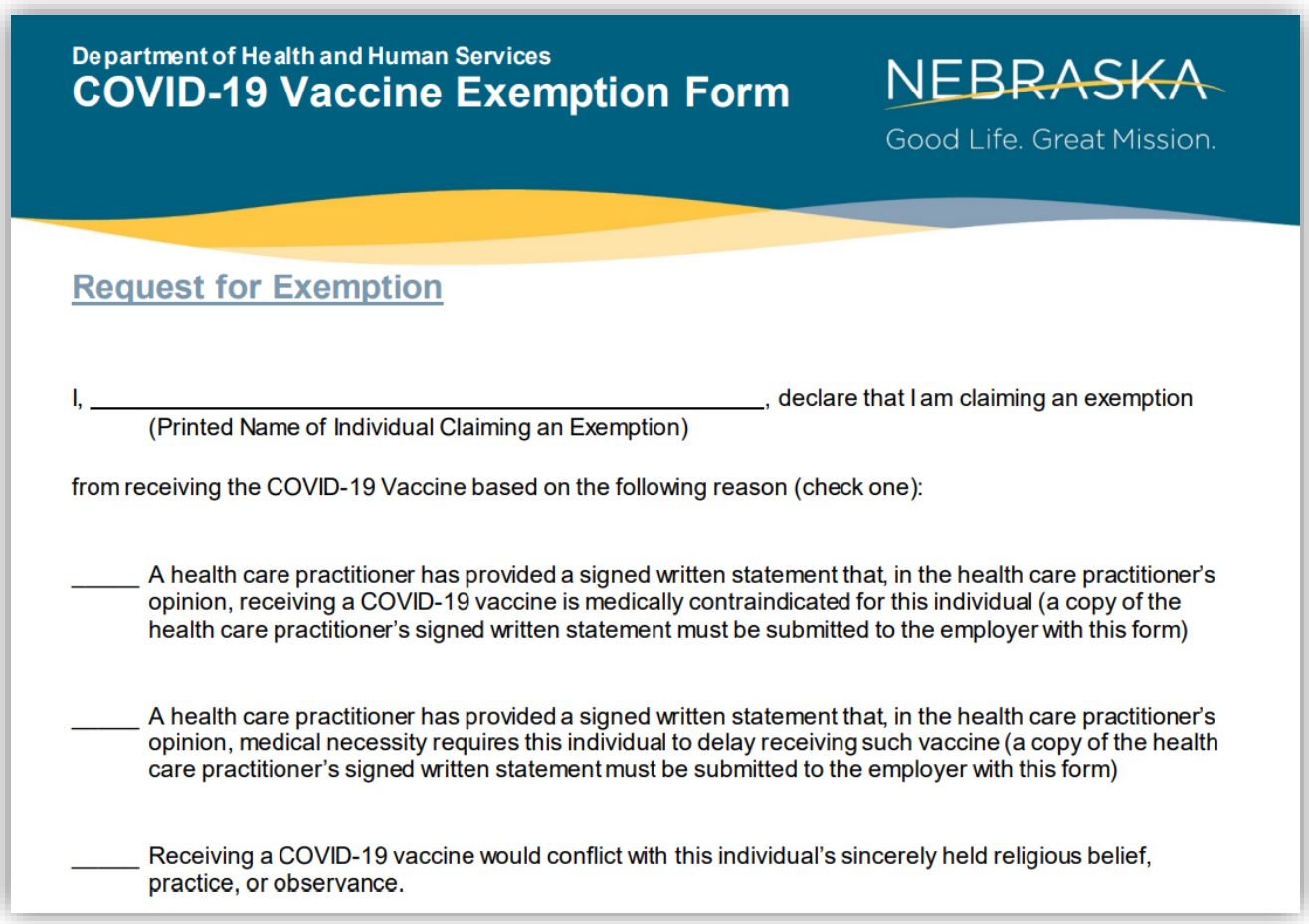
100 % Compliance is now required for all states under QSO-09.

All employees as defined by Attachment M must be either fully vaccinated or have been granted a medical or religious exemption.

New hires will need to be fully vaccinated or have been granted an exemption prior to the start date.

NEBRASKA COVID VACCINE EXEMPTION FORM

https://dhhs.ne.gov/Documents/COVID-19-Vaccine-Exemption-Form.pdf



Department of Health and Human Services

COVID-19 Vaccine Exemption Form

NEBRASKA
Good Life. Great Mission.

Request for Exemption

I, _____, declare that I am claiming an exemption
(Printed Name of Individual Claiming an Exemption)

from receiving the COVID-19 Vaccine based on the following reason (check one):

_____ A health care practitioner has provided a signed written statement that, in the health care practitioner's opinion, receiving a COVID-19 vaccine is medically contraindicated for this individual (a copy of the health care practitioner's signed written statement must be submitted to the employer with this form)

_____ A health care practitioner has provided a signed written statement that, in the health care practitioner's opinion, medical necessity requires this individual to delay receiving such vaccine (a copy of the health care practitioner's signed written statement must be submitted to the employer with this form)

_____ Receiving a COVID-19 vaccine would conflict with this individual's sincerely held religious belief, practice, or observance.

REQUIREMENTS OF 491.8(d)

- WRITTEN POLICES AND PROCEDURES TO ENSURE COMPLIANCE
  - WHO WILL KEEP RECORDS AND WHERE (HR, EMPLOYEE HEALTH, CLINIC MANAGER)
  - HOW WILL EXEMPTIONS BE APPROVED
  - HOW WILL ACCOMMODATIONS BE MADE
  - CONTINGENCY PLAN

- RECORD-KEEPING OF VACCINATION STATUS OF ALL EMPLOYEES.
  - LOG OF ALL EMPLOYEES WITH DATES OF 1ST & 2ND DOSES AND BOOSTERS
  - RECORD OF EXEMPTIONS AND ACCOMMODATIONS
  - TOOLS TO MANAGE RECORD-KEEPING

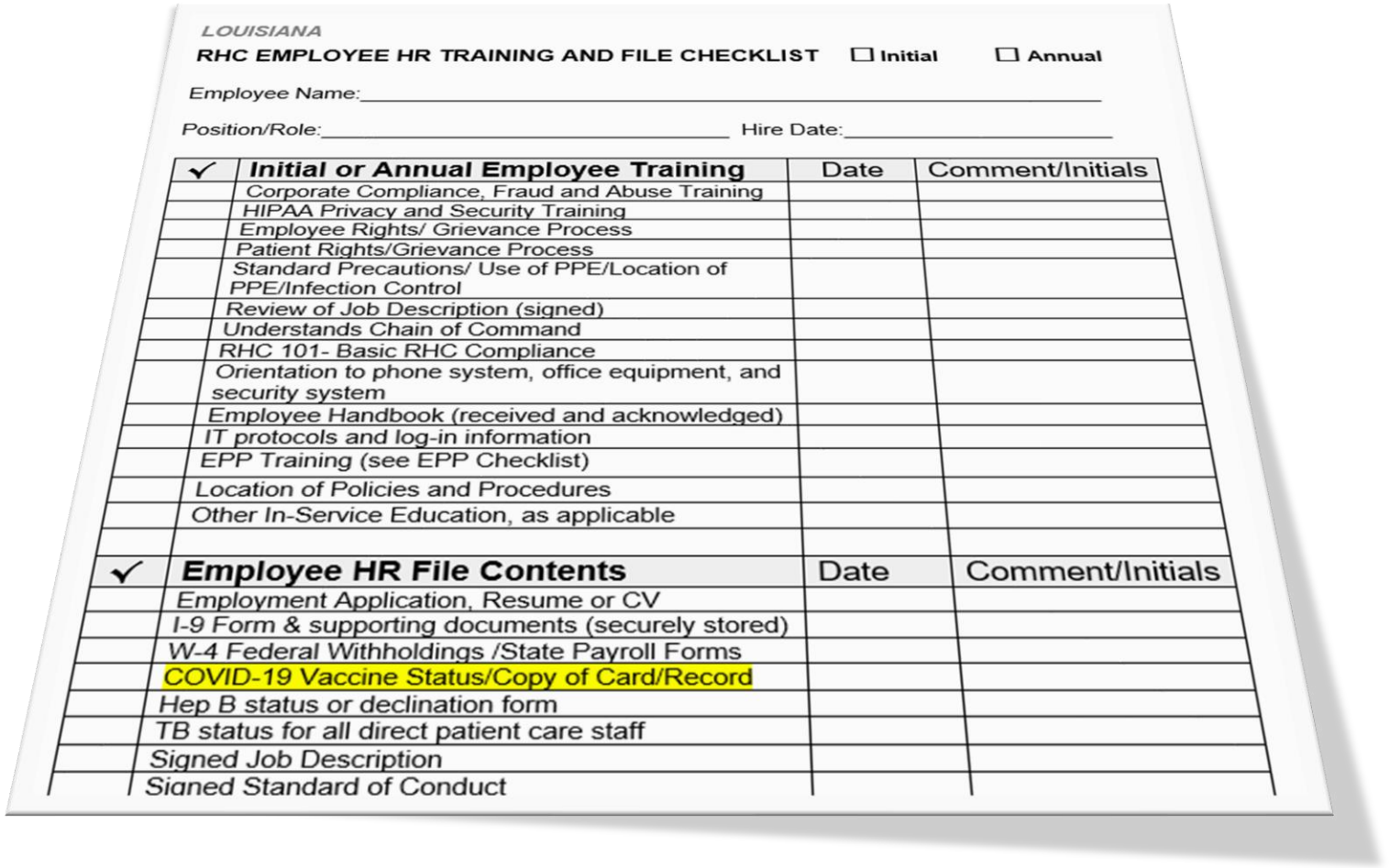
Crossroads Clinic

COVID-19 Vaccination Policy

J Tag References: J-0110, § References: 491.8(D)	**Policy Type:** Human Resources and Employment	**Policy Number: 411.0**
Effective and Revision Date(s): 12/2/2021		

Policy Purpose: The purpose of this policy is to outline the policy and procedures related to the vaccination mandate required by CMS as found in 42 CFR 491.8(d).

Policy Statement: It is the intention of the clinic to remain in regulatory compliance as a Rural Health Clinic in respect to federal, state, and local laws which apply to the conditions of certification. More specifically, it is the intention of the clinic to adhere to the guidance in **Attachment M of QSO-22-07-ALL** and other guidance issues by the Center for Medicare and Medicaid Services (CMS) which requires all RHC staff are fully vaccinated for COVID-19. The clinic is identified as Crossroads Clinic.



LOUISIANA

RHC EMPLOYEE HR TRAINING AND FILE CHECKLIST ☐ Initial ☐ Annual

Employee Name:_____

Position/Role:_____ Hire Date:_____

✓	Initial or Annual Employee Training	Date	Comment/Initials
	Corporate Compliance, Fraud and Abuse Training		
	HIPAA Privacy and Security Training		
	Employee Rights/ Grievance Process		
	Patient Rights/Grievance Process		
	Standard Precautions/ Use of PPE/Location of PPE/Infection Control		
	Review of Job Description (signed)		
	Understands Chain of Command		
	RHC 101- Basic RHC Compliance		
	Orientation to phone system, office equipment, and security system		
	Employee Handbook (received and acknowledged)		
	IT protocols and log-in information		
	EPP Training (see EPP Checklist)		
	Location of Policies and Procedures		
	Other In-Service Education, as applicable		
✓	**Employee HR File Contents**	Date	Comment/Initials
	Employment Application, Resume or CV		
	I-9 Form & supporting documents (securely stored)		
	W-4 Federal Withholdings /State Payroll Forms		
	COVID-19 Vaccine Status/Copy of Card/Record		
	Hep B status or declination form		
	TB status for all direct patient care staff		
	Signed Job Description		
	Signed Standard of Conduct		

Smaller organizations may find a simple HR/Personnel File Checklist a helpful tool.

Larger organizations may already have HR software systems which can be customized to all COVID-19 requirements to the employment and employee health processes.

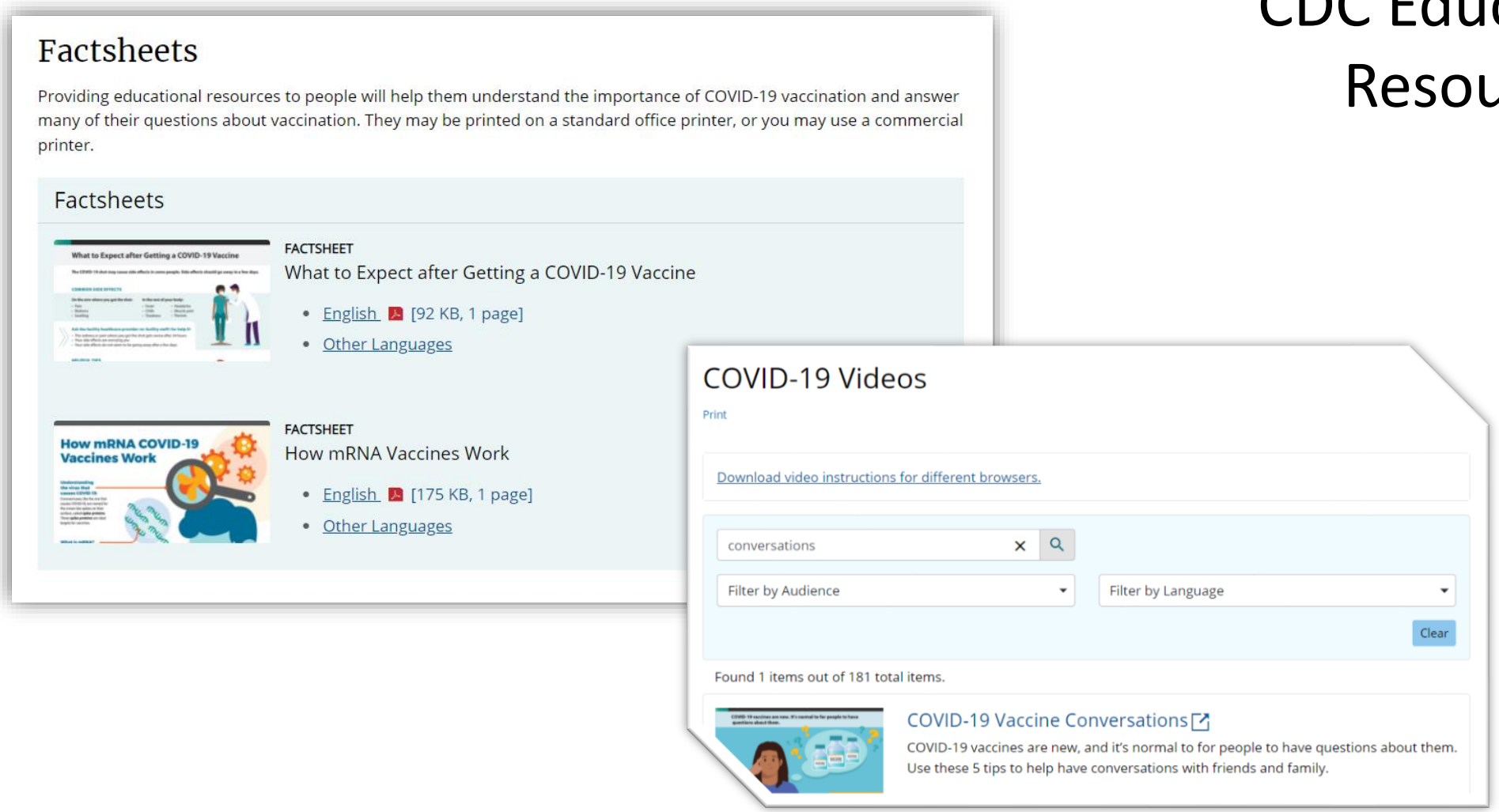
RHC Employee/Contractor COVID Vaccination Tracking Log

NAME	Position/Role	Hire Date	Date 1st Dose Mfg	Date 2nd Dose Mfg	Date Booster Mfg	Exemption Y/N/Type/Date	100% Remote Y/N

REQUIREMENTS OF 491.8(d)

- EMPLOYEE AWARENESS AND EDUCATION
  - EVIDENCE THAT EMPLOYEES HAVE BEEN EDUCATED ON COVID-19 VACCINATIONS
  - EVIDENCE THAT THE VACCINE HAS BEEN MADE AVAILABLE TO ALL EMPLOYEES
  - KNOWLEDGE OF THE EXEMPTION PROCESSES
  - ACCOMMODATIONS OF INDIVIDUAL EMPLOYEES

CDC Educational Resources



https://www.cdc.gov/coronavirus/2019-ncov/vaccines/resource-center.html

Crossroads Clinic
RHC Training

Education In-service and Training Log

On _____, the providers and staff of **Crossroads Clinic** participated in the following in-service training on January 30, 2021.

The following topics were addressed with the RHC providers, employees and staff:

COVID-19 Vaccine Education
New COVID-19 RHC Mandate Requirements
Review of Policy #411
Explanation of Exemption Request Process
Employee File Requirements
Training Requirements

Printed Name	Role or Position	Signature

This training agenda and log shall be retained as part of the RHC's educational training records. Retain copies of handouts or other documents distributed as part of the training.

Signature of individual conducting the training: _____

Document Staff Training on COVID-19 and the Vaccine Mandate

Educational Resources for Employers and Employees

Understanding the RHC COVID-19 Vaccine Mandate Exemptions per CDC and EEOC Guidance

EEOC Technical Assistance (Includes Religious Exemptions/ADA)

EEOC Issues Updated COVID-19 Technical Assistance

https://www.eeoc.gov/newsroom/eeoc-issues-updated-covid-19-technical-assistance-0

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

Medical Exemptions for Contraindications and Delayed Vaccines

Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Approved or Authorized in the United States

https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html

QUESTIONS ABOUT THE COVID VACCINE MANDATE

WHAT HAPPENS WHEN THE PHE ENDS?

COVID-19 PUBLIC HEALTH EMERGENCY

The COVID-19 (SARS-Cov-2) Public Health Emergency (PHE) is currently in effect through mid-July 2022. The PHE was extended for 90 more days by HHS Secretary Xavier Becerra on April 16, 2022. Until this extension or subsequent extensions expire, all blanket waivers are also in effect. The PHE may be extended in 90-day increments. However, many industry experts expect this to be the last extension.

Then, WHAT?

THESE BLANKET WAIVERS FOR RHCS WILL END:

Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs)

- **Certain Staffing Requirements.** 42 CFR 491.8(a)(6). CMS is waiving the requirement in the second sentence of § 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 the RHC operates. CMS is not waiving the first sentence 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 the clinic or center operates. This will assist in addressing potential staffing shortages by increasing flexibility regarding staffing mixes during the PHE.

- **Physician Supervision of NPs in RHCs and FQHCs.** 42 CFR 491.8(b)(1). We are modifying the requirement that physicians must provide medical direction for the clinic's or center's health care activities and consultation for, and medical supervision of, the health care staff, only with respect to medical supervision of nurse practitioners, and only to the extent permitted by state law. The physician, either in person or through telehealth and other remote communications, continues to be responsible for providing medical direction for the clinic or center's health care activities and consultation for the health care staff, and medical supervision of the remaining health care staff. This allows RHCs and FQHCs to use nurse practitioners to the fullest extent possible and allows physicians to direct their time to more critical tasks.

THESE BLANKET WAIVERS WILL END:

- **Temporary Expansion Locations.** CMS is waiving the requirements at 42 CFR §491.5(a)(3)(iii) which require RHCs and FQHCs be independently considered for Medicare approval if services are furnished in more than one permanent location. Due to the current PHE, CMS is temporarily waiving this requirement removing the location restrictions to allow flexibility for existing RHCs/FQHCs to expand services locations to meet the needs of Medicare beneficiaries. This flexibility includes areas which may be outside of the location requirements 42 CFR §491.5(a)(1) and (2) but will end when the HHS Secretary determines there is no longer a PHE due to COVID-19.

https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf

THIS MEANS: NO STAFFING WAIVERS AFTER THE PHE ENDS.

- The staffing requirements in 42 CFR § 491 must be in place:
  - NP or PA must be staffed at least 50% of all RHC Patient Care Hours as posted.
  - The RHC must have a designated Medical Director (Physician) who is responsible for the medical direction of the clinic and who performs chart audits to determine if NPP are following the medical management policies. The medical director must be able to see patients and provide medical services. The RHC Medical Director role is separate and distinct from any state required collaborative or supervisory role.
  - The flexibility for RHC providers to be working from home or alternate locations will end. RHC providers must provide face-to-face services in an approved encounter location.

THIS MEANS: NO SATELLITE OR OFF SITE RHC LOCATIONS WHICH ARE NOT INDEPENDENTLY CERTIFIED AS NEW RHCS AFTER THE PHE ENDS.

- No RHC services can be performed off-site or at temporary or satellite locations.
  - Each location must be certified at a qualified location with its own CCN number.
  - Each location must be in a currently designated Primary Care Healthcare Shortage Area or in a currently designated Medically Underserved Area.
  - Each location must be in a rural area as defined by the Census Bureau.
  - If the temporary location is in the process of becoming certified but is not certified at the time that the PHE ends, the services at that location are not considered RHC services until the new certification is obtained.
  - No expansion site services can be held out as services of the main RHC after the PHE ends.

WHAT ABOUT MEDICAL TELEHEALTH AFTER THE PHE ENDS?

- The flexibilities given to provide telehealth will end 151 days after the end of the PHE.
- RHCs will no longer be able to provide distant site telehealth after the 151-grace period. CMS may offer more clarification on this for RHCs since most of what has been published about the grace period applies to Part B Fee for Service telehealth.
- Remember that distant site services occur when the provider is in the RHC and the patient is somewhere else.
- Originating site telehealth services occur when the patient is in the RHC (hosted by the RHC) and the provider is a non-RHC provider located somewhere else. Originating site services will pay the RHC a fee for services amount for hosting the patient.

WHAT ABOUT MENTAL/BEHAVIORAL TELEHEALTH AFTER THE PHE ENDS?

- Mental and Behavioral Health services provided via telehealth are now recognized as RHC encounters and reimburse the AIR. This was a provision of the 2022 MPFS Final Rule.
- The end of the PHE does NOT change this.
- CMS is expected to give further clarification on whether these services must be distant site or if originating site services are also included. To pay the AIR we would expect the services to be distant site; however, CMS has not been clear on this.
- Billing guidance for these mental health telehealth services can be found in SE 22001.

https://www.cms.gov/files/document/se22001-mental-health-visits-telecommunications-rural-health-clinics-federally-qualified-health.pdf

MENTAL HEALTH TELEHEALTH CODING & BILLING INFORMATION

RHC Claims for Mental Health Visits via Telecommunications Example

Revenue Code	HCPCS Code	Modifiers
0900	90834 (or other Qualifying Mental Health Visit Payment Code)	95 (audio-video) or FQ (audio-only) CG (required)

Mental Health Services	
HCPCS Code	**Short Descriptor**
90791	Psych diagnostic evaluation
90792	Psych diag eval w/med srvcs
90832	Psytx pt&/family 30 minutes
90834	Psytx pt&/family 45 minutes
90837	Psytx pt&/family 60 minutes
90839	Psytx crisis initial 60 min
90845	Psychoanalysis

TIMELINE

July 15, 2022

Current PHE ends if not extended. All blanket waivers end. Staffing must be restored to pre-PHE levels. NP or PA 50% of all patient care hours. No temporary expansion sites.

December 13, 2022

The 151-day grace period for phasing out distant site telehealth and telehealth flexibilies ends. Expect more clarification on this from CMS concerning the grace period.

On-going

Mental Health via Telehealth continues for RHCs after the PHE ends. Refer to CMS guidance on coding and billing. Expect clarification between distant site and originating site.

RAMPING BACK UP AND PROTECTING YOUR AIR

- Many RHCs experienced low volumes during the PHE or switched to telemedicine services. In either case, this negatively impacted the productivity standards.
- RHCs always have the option of asking for a productivity waiver for cost reporting.
- However, for PBRHCs with grandfathered AIRs, it is important to sustain the grandfathered cost per encounter. Falling below the productivity standard can jeopardize the grandfathered rate in a low-volume cost reporting period.
- Physicians should have 4,200 encounters per FTE. NPs or PAs should have 2,100 encounters per FTE. This calculation is based on the hours the provider is available to see patients. Falling below this aggregate standard will subject you to CMS using what the visits should have been as the AIR denominator instead of the actual number of encounters which can decrease the cost per encounter and lower the rate from your grandfathered upper payment limit.

Patty Harper, RHIA, CHTS-PW, CHTS-IM, CHC®
InQuiseek Consulting
Pharper@inquiseek.com
318-243-2687

Patty Harper is CEO of InQuiseek Consulting, a healthcare consulting company based in Louisiana. She has over 24 years of healthcare experience in the areas of healthcare finance & reimbursement, health information management, compliance, and practice management. She began her healthcare career as a hospital controller and reimbursement analyst. Patty holds a B.S. in Health Information Administration (cum laude) from Louisiana Tech University. She is credentialed through AHIMA as a RHIA, CHTS-IM, and CHTS-PW. Patty successfully completed AHIMA's ICD-10 Academy and has previously been recognized as an ICD-10 Trainer. She is also Certified in Healthcare Compliance (CHC®) thorough the Compliance Certification Board. Patty is a frequent speaker and contributor for national, state and regional and rural healthcare associations on these and other reimbursement-related topics. She has held memberships regional, state and national organizations throughout her healthcare career including NARHC, NRHA, AHIMA, MGMA, and HFMA. Patty currently serves on the Board of NARHC.