

age an opportunity to qualify as an essential provider.

*Comment:* Several commenters suggested that the specialty provider test should recognize other services, such as geriatrics, cardiology, gastroenterology, orthopedics, oncology, and other specialty services at the discretion of the Secretary.

*Response:* The specialty provider test was established to specifically target clinics that exclusively provide pediatric and OB/GYN care. Although we agree that these are vital services, they go beyond the intended scope of the RHC program. The only exception to this will be geriatrics, which we believe is addressed by the other essential provider tests.

*Comment:* A commenter asked us to consider expanding the test over a wider geographic area. RHCs may be the sole providers of specialty services in the surrounding communities.

*Response:* We are revising § 491.5(b)(2)(iii) for this test to grant exceptions to specialty clinics that are the sole or major source of primary care for their communities. We believe this change diminishes the importance of how we define the boundaries of the clinic's service area.

*Comment:* A commenter recommended that the definition of specialty clinic provider should be revised to address a defined population rather than the entire census population.

*Response:* We are revising § 491.5(b)(2)(iii) to grant exceptions to specialty clinics that are the sole or major source of primary care for Medicare (where applicable), Medicaid, and uninsured patients. We acknowledge that pediatric clinics that have lost their medically underserved status may only be able to demonstrate that they are the sole or major source of primary care for Medicaid, and uninsured patients.

*Comment:* A commenter suggested that this test should be expanded to include women's health services as an essential service provider. In some States, RHCs are the exclusive provider of breast and cervical screening for Medicare, Medicaid, and uninsured patients.

*Response:* The specialty provider test was established to specifically target clinics that exclusively provide pediatric and OB/GYN care. We believe it is unnecessary to further target other specialties. Rural clinics that provide these important services should easily qualify under one of the other tests as set forth in this final rule.

#### GME Test

*Comment:* Several commenters recommended that RHCs providing supervised training to nonphysician practitioners should also be eligible under the GME test. They pointed out that this would bolster the Congress' intent to encourage the use of these practitioners to improve access in rural areas. The commenters also indicated that the Federal government has for many years actively supported training through title VII and title VIII of the PHS Act.

*Response:* We disagree that this essential provider test should be expanded to include RHCs that are part of a formal training program for nonphysician practitioners. CMS believes that the GME test is no longer needed in light of all the refinements and clarifications made to the other essential community provider tests. In other words, CMS strongly believes that any RHC receiving direct GME payment will now be able to easily satisfy one of the several other tests for being considered essential to the delivery of primary care. When this test was first proposed on February 28, 2000, CMS expected that there would be a significant number of RHCs receiving direct GME payments by the time this test was formally issued. Unfortunately, this has not occurred. In light of this fact and the many refinements to the rule, which have expanded on the other essential community provider tests, CMS is revising the regulation to eliminate the GME test.

*Comment:* Several commenters suggested that we should expand the GME test to include clinics that have a formal arrangement with a medical school to rotate medical students through the clinic.

*Response:* As discussed above, we are eliminating the GME test.

#### Staffing and Staff Responsibilities (§ 491.8)

*Comment:* A commenter suggested that an RHC that can document ongoing recruitment efforts should be allowed additional time for waivers in filling the vacancy. The commenter stated that for some rural communities it is difficult to attract nonphysician providers.

*Response:* We disagree with the commenter. Section 4161(b)(2) of the OBRA '90 added section 1861(aa)(7) to the Act to provide us with the authority to grant a 1-year waiver of the mid-level requirement for existing RHCs and RHC applicants. The BBA amended section 1861(aa)(7)(B) of the Act to restrict our authority to allow a waiver for RHC applicants. Therefore, we are retaining

the requirement in the new § 491.8(d)(1).

*Comment:* We received several comments regarding the nonphysician practitioner requirement for RHCs. One commenter recommended that the requirement be eliminated for areas that are no longer health professional shortage areas. The commenter believes that a community that has been successful in recruiting physicians may no longer need a nonphysician practitioner to serve the area. A second commenter believes that the requirement may be difficult to comply with and mandate the hiring of personnel that are not cost effective.

*Response:* We do not have the authority to eliminate the nonphysician staffing requirement. Both the Federal statute and regulations mandate the use of nonphysician practitioners. Specifically, § 491.8(a)(6) clearly specifies that a nonphysician practitioner must be available to furnish patient care services at least 50 percent of the time the RHC operates.

*Comment:* A commenter suggested that start-up RHCs in extremely rural areas, such as a designated frontier county (less than six persons per square mile) should receive an exception from the staffing requirements in § 491.8. The difficulty in establishing, much less maintaining providers in frontier areas is well documented.

*Response:* Section 491.8(a)(6) states that a physician or nonphysician practitioner must be available to furnish patient services at all times during RHC hours of operation. Section 4205(c) of the BBA restricts our authority to grant a waiver to clinics applying for RHC status. The RHC applicant must demonstrate that it employs a nonphysician practitioner before it can receive approval as an RHC.

*Comment:* A commenter asked us to clarify the term "operates" as it relates to the requirement of staffing a nonphysician practitioner 50 percent of the time. For example, does it mean normal business hours and excludes extended hours?

*Response:* The term "operates" in § 491.8(a)(6) means the total operating schedule during which the clinic furnishes RHC services.

#### Quality Assessment and Performance Improvement (§ 491.11) (Condition for Certification (CFC) for Rural Health Clinics)

*Comment:* Most of the commenters agree that a quality assessment and performance improvement program is needed for RHCs. They also agreed with the flexibility of RHCs to design and carry out their own performance