

## Applicability of 42 CFR Part 2 to FQHC clinicians

Per Final Rule, published January 2017

Available at: <https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00719.pdf>

**Summary:** The 42 CFR Part 2 Final Rule, published in January 2017, applies to primary care providers working in FQHCs only if either of the following applies:

- (1) they work in an identified unit within such general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment, or
- (2) the primary function of the provider is substance use disorder diagnosis, treatment or referral for treatment and they are identified as providers of such services."

### **Background:**

- Per the Final Rule, 42 CFR Part 2 requirements apply only to "Programs" that meet the definition provided in the regulatory text. This definition (quoted verbatim below) **excludes** "general medical facility[ies]".
- Per the Preamble text of the Final Rule (also quoted below), FQHCs **generally** are considered "general medical facilities" and therefore the Final Rule **generally** does not apply to them. However, there are two exceptions, as described in the Preamble text below.

### **Definition of "Program" to which the reg applies (from regulatory text of Final Rule):**

"Program means:

- (1) An individual or entity (**other than a general medical facility**) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
- (2) An identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
- (3) Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers"

### **Applicability to FQHC providers (from preamble text of Final Rule)**

"SAMHSA's FAQ guidance further addresses the issue of what constitutes a general medical facility. This FAQ guidance clarifies that, while the term "general medical care facility" is not defined in the definitions section of 42 CFR 2.11, hospitals, trauma centers, or **federally qualified health centers would generally be considered "general medical care" facilities. Therefore, primary care providers who work in such facilities would only meet part 2's definition of a program if**

- (1) they work in an identified unit within such general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment, or
- (2) the primary function of the provider is substance use disorder diagnosis, treatment or referral for treatment and they are identified as providers of such services."