

## Obstetrical Malpractice Insurance Subsidies in Underserved Areas

This safe harbor provides that remuneration does not include any payment made by a hospital or other entity to another entity that is providing malpractice insurance (including a self-funded entity), where such payment is used to pay for some or all of the costs of malpractice insurance premiums for a practitioner (including a certified nurse-midwife as defined by Section 1861 (gg) of the Social Security Act) who engages in obstetrical practice as a routine part of his or her medical practice in a primary care Health Professional Shortage Area (HPSA), as long as all of the following standards are met:

Elements of the Safe Harbor	Check if Applicable to the Arrangement
The payment is made in accordance with a written agreement between the entity paying the premiums and the practitioner, which sets out the payments to be made by the entity, and the terms under which the payments are to be provided	
<p>The practitioner must certify that for the initial coverage period (not to exceed one year) the practitioner has a reasonable basis for believing that at least seventy five percent (75%) of the practitioner’s obstetrical patients treated under the coverage of the malpractice insurance will either:</p> <ol style="list-style-type: none"> <li>1. Reside in a HPSA or Medically Underserved Area (MUA); or</li> <li>2. Be part of a Medically Underserved Population (MUP)</li> </ol> <p>Thereafter, for each additional coverage period (not to exceed one year), at least seventy five (75%) of the practitioner’s obstetrical patients treated under the prior coverage period (not to exceed one year) must have:</p> <ol style="list-style-type: none"> <li>1. Resided in a HPSA or MUA; or</li> <li>2. Been a part of a MUP</li> </ol>	
There is no requirement that the practitioner make referrals to, or otherwise generate business for, the entity as a condition for receiving benefits	
The practitioner is not restricted from establishing staff privileges at, referring any service to, or otherwise generating any business for, any other entity of his or her choosing	
The amount of payment may not vary based on the volume or value of any previous or expected referrals to, or business otherwise generated for, the entity by the practitioner for which payment may be made in whole or in part by a federal health care program	
The practitioner must treat obstetrical patients who receive medical benefits or assistance under any federal health care program in a non-discriminatory manner	
The insurance is a bona fide malpractice insurance policy or program and the premium, if any, is calculated based on a bona fide assessment of the liability risk covered under the insurance	

*Note: The costs of medical malpractice insurance means the following:  
 For practitioners who engage in obstetrical practice full time, any costs attributable to malpractice insurance.  
 For practitioners who engage in obstetrical practice part time or on a sporadic basis, the costs attributable exclusively to the obstetrical portion of the practitioner’s malpractice insurance and related exclusively to obstetrical services provided in a primary care HPSA.*