

98-134-HFS 124-DETROIT HOSPITAL ACCESS  
HOSPITALS



Tommy G. Thompson  
Governor

Joe Leean  
Secretary



**State of Wisconsin**

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

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September 9, 1998

The Honorable Robert Welch, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 201, One East Main  
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 125 West, State Capitol  
Madison, Wisconsin

Dear Senator Welch and Representative Grothman:

This is notification that the Department at the end of this week will publish an emergency order to amend its rules for hospitals, ch. HFS 124, to recognize a "critical access hospital" as a type of special hospital and to provide for a process by which the Department will designate a hospital as a critical access hospital. A copy of the emergency order is attached to this letter.

"Critical access hospital" is a federal Medicare term for a nonprofit or public limited service medical facility located in a rural area.

Mainly because of sharply reduced inpatient stays related to changes in the health care industry, and the resulting loss of revenues, several rural hospitals in the state are likely to close soon or convert to other types of facilities if they cannot reduce their costs. This will mean loss of readily accessible hospital services for people in some rural areas of the state. The rule changes will enable as many as 33 rural hospitals to be designated as critical access hospitals, which means they can reduce their costs but continue to be approved by the Department as hospitals and certified by the federal Health Care Financing Administration to receive Medicare funding for care provided to Medicare recipients.

If you have any questions about the emergency rules, you may contact Lillian Redding of the Department's Division of Supportive Living at 266-8482..

Sincerely,

  
Paul E. Menge  
Administrative Rules Manager

Attachment

8-28-98

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING, REPEALING AND RECREATING AND CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare and Medicaid funding for care provided to Medicare and Medicaid recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105-33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24-hour emergency care services; provide inpatient care for a patient for a period not to exceed 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part-time, off-site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re-defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i - 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a

part-time and off-site basis and a requirement for a written agreement with one or more full-time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas.

Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital. The rule changes are being made by emergency order to prevent the imminent closing of several rural hospitals and the consequent loss of readily accessible hospital services for people in the rural areas served by those hospitals.

### ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 50.36(1) and 227.24(1), Stats., the Department of Health and Family Services hereby amends, repeals and recreates and creates rules interpreting ss. 50.33(1g) and 50.33(2)(c), Stats., as affected by 1997 Wisconsin Act 237, as follows:

SECTION 1. HFS 124.02(1m) is created to read:

HFS 124.02(1m) "Critical access hospital" means a hospital that is designated by the department as meeting the requirements of 42 USC 1395i-4(c)(2)(B) and is federally certified as meeting the requirements of 42 USC 1395i-4(e).

SECTION 2. HFS 124.02(6), (12) and (19) are amended to read:

HFS 124.02(6) (a) "Hospital" means any building, structure, institution or place offering inpatient, overnight care on a 24-hour-a-day basis, or on an as-needed basis in the case of a critical access hospital, and devoted primarily to the maintenance and operation of facilities for ~~diagnosing, treating, and providing~~ the diagnosis, treatment of and medical or surgical care for 3 or more ~~unrelated nonrelated~~ individuals, hereinafter designated patients, who have a physical or mental suffering from illness, disease, injury, a rehabilitative condition or are pregnant, or disability, whether physical or mental, and including pregnancy and which regularly ~~makes~~ making available at least clinical laboratory services, diagnostic x-ray services and treatment facilities for surgery, or obstetrical care or other definitive medical treatment.

(b) "Hospital" may include, but is not limited to, related facilities such as outpatient facilities, nurses', interns' and residents' quarters, training facilities and central service facilities operated in connection with the hospital.

(c) "Hospital" includes a special hospital.

(12) "~~Physician's~~ Physician assistant" means a person certified under ch. 448, Stats., to perform ~~as a physician's assistant~~ patient services under the supervision and direction of a licensed physician.

(19) "Registered nurse" means a person who ~~holds a certificate of registration~~ is licensed as a registered nurse under ch. 441, Stats.

SECTION 3. HFS 124.02(21) is repealed and recreated to read:

HFS 124.02(21) "Special hospital" means a hospital that provides a limited type of medical or surgical care, such as an orthopedic hospital, a children's hospital, a critical access hospital, a psychiatric hospital or a maternity hospital.

SECTION 4. HFS 124 subchapter VI is created to read:

SUBCHAPTER VI—CRITICAL ACCESS HOSPITALS

HFS 124.37 APPLICABILITY. This subchapter applies to the department and to all hospitals designated by the department as critical access hospitals.

HFS 124.38 DEFINITIONS. In this subchapter:

(1) "Clinical nurse specialist" means a registered nurse who is currently certified as a clinical nurse specialist by a national certifying body that is recognized by the state board of nursing.

(2) "Network hospital" means a full-time, general hospital that has an agreement with a critical access hospital to provide ongoing acute care services and other services for patients transferred or referred from the critical access hospital.

(3) "Nurse practitioner" means a registered nurse who is currently certified as a nurse practitioner by a national certifying body that is recognized by the state board of nursing.

(4) "Rural health plan" means a plan approved by the federal health care financing administration that describes how the department will implement and administer the federal medicare rural hospital flexibility program—critical access hospitals, under 42 USC 1395i--4.

HFS 124.39 DESIGNATION AS A CRITICAL ACCESS HOSPITAL. (1) ELIGIBILITY. To be eligible for designation as a critical access hospital, a hospital shall be all of the following:

(a) A nonprofit or public hospital approved by the department under this chapter to operate as a hospital.

(b) Located in an area outside of a metropolitan statistical area as defined in 42 USC 1395ww(d).

(c) Located more than a 35-mile drive from another hospital or certified by the department under sub. (2) as a necessary provider of health care services to residents in the area.

(d) A hospital that has a provider agreement to participate in medicare in accordance with 42 CFR 485.612.

(e) A hospital that has not been designated by the federal health care financing administration as an urban hospital for purposes of medicare reimbursement.

(2) APPLICATION FOR CERTIFICATION AS A NECESSARY PROVIDER FOR AN AREA.

(a) A hospital meeting the criteria under sub. (1)(a), (b),(d) and (e) may apply to the department for certification as a necessary provider of health care services to residents in its area if it cannot meet the criterion under sub. (1)(c) that it be located more than a 35-mile drive from another hospital. Application shall be made in accordance with a format provided by the department.

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

(b) Upon receipt of a completed application from a hospital for certification as a critical access hospital, the department shall review the application and shall approve or disapprove it within 60 days of receipt.

(3) APPLICATION FOR CRITICAL ACCESS HOSPITAL STATUS. (a) A hospital eligible under sub. (1) for designation as a critical access hospital may apply to the department for designation. Application shall be made in accordance with a format provided by the department.

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

(b) Upon receipt of a completed application from a hospital for designation as a critical access hospital, the department shall review the application and shall determine if the applicant meets the federal conditions of participation in medicare for critical access hospitals under 42 CFR 485.601 to 485.645. If the applicant hospital meets those federal conditions of participation and all requirements under ss. HFS 124.40 and 124.41, the department shall, within 90 days after receipt of a completed application, designate the hospital as a critical access hospital, notify the hospital in writing of its action and submit its certification of the designation to the federal health care financing administration for acceptance.

(c) Following notification by the federal health care financing administration that it has accepted the department's certification, the department shall issue a certificate of approval that establishes the applicant's critical access hospital status.

HFS 124.40 REQUIREMENTS FOR A CRITICAL ACCESS HOSPITAL. (1) OPERATION AS A HOSPITAL. A critical access hospital shall comply with all provisions of this chapter, except as provided in this section.

(2) BED COMPLEMENT. (a) A critical access hospital shall maintain no more than a total of 15 beds to be used exclusively for acute inpatient care.

(b) If the critical access hospital has an agreement established under 42 USC 1395tt governing the hospital's maintenance of swing beds, the critical access hospital may maintain up to a total of 25 beds, of which no more than 15 beds may be used exclusively for acute inpatient use.

(3) LIMITS ON ACUTE INPATIENT STAYS. A critical access hospital shall provide inpatient care for periods not to exceed 96 hours, unless a longer inpatient stay is required because transfer to a network or other hospital is precluded due to inclement weather or other emergency conditions.

(4) EMERGENCY CARE SERVICES. (a) A critical access hospital shall make emergency services available on a 24-hour-a-day-basis and in accordance with the rural health plan.

(b) Emergency services shall be provided by a practitioner with training or experience in emergency care who is on call and immediately available by telephone or radio contact, and available on-site within 30 minutes on a 24-hour-a-day basis. In this paragraph, "practitioner" means a physician, a nurse practitioner or a physician assistant.

(5) STAFFING. (a) General. A critical access hospital shall comply with the provisions of subchs. III and IV only when the facility has one or more patients receiving care in the facility. When the facility does not have any inpatients, the facility need not comply with the federal conditions of participation of a hospital under medicare relating to the number of hours during a day, or days during a week, in which the facility must be open, and with the provisions of subchs. III and IV relating to staffing requirements, except that the facility is required to make available emergency care services pursuant to sub. (4) and shall have registered nurses available on a 24-hour basis as required by s. HFS 124.13(1)(a).

(b) Inpatient care services. Inpatient care under sub. (3) may be provided by a physician assistant, nurse practitioner or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility.

(c) Special services. A critical access hospital may make available any services provided by staff under ss. HFS 124.15, 124.16, 124.17, 124.18, 124.19, 124.20, 124.21, 124.22, 124.23 or 124.25 on a part-time, off-site basis under arrangements as specified in 42 USC 1395x(e).

(6) REFERRAL AGREEMENT. A critical access hospital shall have a written agreement with one or more network hospitals or another full-time hospital, which shall address all of the following:

- (a) Transfer and referral of patients from the critical access hospital.
- (b) Development and use of communication systems.
- (c) Provision of emergency and non-emergency transportation.
- (d) Credentialing of professional staff and quality assurance.

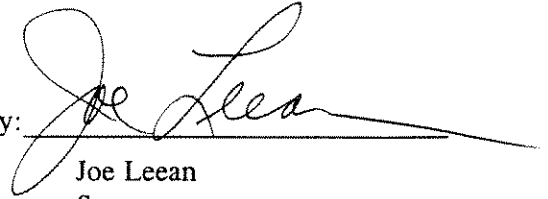
HFS 124.41 RURAL HEALTH PLAN. Before implementation of the medicare rural hospital flexibility program pursuant to 42 USC 1395i-4 for the establishment of critical access hospitals, the department shall develop a rural health plan. The rural health plan shall be submitted to the federal health care financing administration for approval.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24(1)(c) Stats.

Wisconsin Department of Health and  
Family Services

Dated: **August 31, 1998**

By: \_\_\_\_\_



Joe Leean  
Secretary

SEAL:

LRB or Bill No./Adm. Rule No.  
HFS 124.02 & 124.37-124.41  
Amendment No. if Applicable

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**FISCAL ESTIMATE**  
DOA-2048 N(R10/96)

Subject

**CRITICAL ACCESS HOSPITALS**

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget     Yes     No

Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
     Permissive     Mandatory  
2.  Decrease Costs  
     Permissive     Mandatory

3.  Increase Revenues  
     Permissive     Mandatory  
4.  Decrease Revenues  
     Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties     Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This order amends the Department's rules for hospitals to enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access hospitals," which will permit them to reduce their costs but still continue to be approved by the Department as hospitals and certified by the federal Health Care Financing Administration to receive Medicare funding for care provided to Medicare recipients.

The changes made by this order to ch. HFS 124 will not affect the expenditures or revenues of state government or local governments.

Several hospitals in rural Wisconsin are in jeopardy of having to close because of changes in the health care industry which have resulted in greatly reduced inpatient care in recent years with consequent loss of revenues on which the hospitals have depended. The federal government has developed a Medicare Rural Hospital Flexibility Program to enable a rural hospital that meets specified criteria to convert from a full service hospital to a limited service critical access hospital and continue to receive Medicare funding. In Wisconsin, for rural hospitals to take advantage of this change in federal law, the hospital approval program statutes had to be amended to accommodate "critical access hospitals," and in particular to permit the Department to designate a hospital as meeting the federal requirements for a critical access hospital. A recent session law, 1997 Wisconsin Act 237, modified the statutory definition of "hospital" and added a definition for "critical access hospital." The Department is implementing those changes through this order. Any costs to the Department for necessary surveying to enable it to determine if an applicant hospital meets the federal requirements were taken into consideration during legislative deliberations on the bill that became Act 237.

Two of the 33 rural hospitals in the state that could be eligible for designation as critical access hospitals are operated by local governments. There is no requirement that a rural hospital apply for designation, but if it does its financial situation will likely improve.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)

H&FS/ Lillian Redding, 266-8482

Authorized Signature/Telephone No.

  
Richard W. Lorang, 266-9622

Date

7-2-98



SEP 17 1998

8-28-98

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING, REPEALING AND RECREATING AND CREATING RULES

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Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas.

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SECTION 2. HFS 124.02(6), (12) and (19) are amended to read:

HFS 124.02(6) (a) "Hospital" means any building, structure, institution or place offering inpatient, overnight care on a 24-hour-a-day basis, or on an as-needed basis in the case of a critical access hospital, and devoted primarily to the maintenance and operation of facilities for diagnosing, treating, and providing the diagnosis, treatment of and medical or surgical care for 3 or more unrelated nonrelated individuals, hereinafter designated patients, who have a physical or mental suffering from illness, disease, injury, a rehabilitative condition or are pregnant, or disability, whether physical or mental, and including pregnancy and which regularly makes making available at least clinical laboratory services, diagnostic x-ray services and treatment facilities for surgery, or obstetrical care or other definitive medical treatment.

(b) "Hospital" may include, but is not limited to, related facilities such as outpatient facilities, nurses', interns' and residents' quarters, training facilities and central service facilities operated in connection with the hospital.

(c) "Hospital" includes a special hospital.

(12) "~~Physician's~~ Physician assistant" means a person certified under ch. 448, Stats., to perform as a physician's assistant patient services under the supervision and direction of a licensed physician.

(19) "Registered nurse" means a person who ~~holds a certificate of registration~~ is licensed as a registered nurse under ch. 441, Stats.

SECTION 3. HFS 124.02(21) is repealed and recreated to read:

HFS 124.02(21) "Special hospital" means a hospital that provides a limited type of medical or surgical care, such as an orthopedic hospital, a children's hospital, a critical access hospital, a psychiatric hospital or a maternity hospital.

SECTION 4. HFS 124 subchapter VI is created to read:

#### SUBCHAPTER VI—CRITICAL ACCESS HOSPITALS

HFS 124.37 APPLICABILITY. This subchapter applies to the department and to all hospitals designated by the department as critical access hospitals.

HFS 124.38 DEFINITIONS. In this subchapter:

- (1) "Clinical nurse specialist" means a registered nurse who is currently certified as a clinical nurse specialist by a national certifying body that is recognized by the state board of nursing.
- (2) "Network hospital" means a full-time, general hospital that has an agreement with a critical access hospital to provide ongoing acute care services and other services for patients transferred or referred from the critical access hospital.
- (3) "Nurse practitioner" means a registered nurse who is currently certified as a nurse practitioner by a national certifying body that is recognized by the state board of nursing.
- (4) "Rural health plan" means a plan approved by the federal health care financing administration that describes how the department will implement and administer the federal medicare rural hospital flexibility program—critical access hospitals, under 42 USC 1395i--4.

HFS 124.39 DESIGNATION AS A CRITICAL ACCESS HOSPITAL. (1) ELIGIBILITY. To be eligible for designation as a critical access hospital, a hospital shall be all of the following:

- (a) A nonprofit or public hospital approved by the department under this chapter to operate as a hospital.
- (b) Located in an area outside of a metropolitan statistical area as defined in 42 USC 1395ww(d).
- (c) Located more than a 35-mile drive from another hospital or certified by the department under sub. (2) as a necessary provider of health care services to residents in the area.
- (d) A hospital that has a provider agreement to participate in medicare in accordance with 42 CFR 485.612.
- (e) A hospital that has not been designated by the federal health care financing administration as an urban hospital for purposes of medicare reimbursement.

(2) APPLICATION FOR CERTIFICATION AS A NECESSARY PROVIDER FOR AN AREA.

- (a) A hospital meeting the criteria under sub. (1)(a), (b),(d) and (e) may apply to the department for certification as a necessary provider of health care services to residents in its area if it cannot meet the criterion under sub. (1)(c) that it be located more than a 35-mile drive from another hospital. Application shall be made in accordance with a format provided by the department.

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

- (b) Upon receipt of a completed application from a hospital for certification as a critical access hospital, the department shall review the application and shall approve or disapprove it within 60 days of receipt.

(3) APPLICATION FOR CRITICAL ACCESS HOSPITAL STATUS. (a) A hospital eligible under sub. (1) for designation as a critical access hospital may apply to the department for designation. Application shall be made in accordance with a format provided by the department.

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

(b) Upon receipt of a completed application from a hospital for designation as a critical access hospital, the department shall review the application and shall determine if the applicant meets the federal conditions of participation in medicare for critical access hospitals under 42 CFR 485.601 to 485.645. If the applicant hospital meets those federal conditions of participation and all requirements under ss. HFS 124.40 and 124.41, the department shall, within 90 days after receipt of a completed application, designate the hospital as a critical access hospital, notify the hospital in writing of its action and submit its certification of the designation to the federal health care financing administration for acceptance.

(c) Following notification by the federal health care financing administration that it has accepted the department's certification, the department shall issue a certificate of approval that establishes the applicant's critical access hospital status.

HFS 124.40 REQUIREMENTS FOR A CRITICAL ACCESS HOSPITAL. (1) OPERATION AS A HOSPITAL. A critical access hospital shall comply with all provisions of this chapter, except as provided in this section.

(2) BED COMPLEMENT. (a) A critical access hospital shall maintain no more than a total of 15 beds to be used exclusively for acute inpatient care.

(b) If the critical access hospital has an agreement established under 42 USC 1395tt governing the hospital's maintenance of swing beds, the critical access hospital may maintain up to a total of 25 beds, of which no more than 15 beds may be used exclusively for acute inpatient use.

(3) LIMITS ON ACUTE INPATIENT STAYS. A critical access hospital shall provide inpatient care for periods not to exceed 96 hours, unless a longer inpatient stay is required because transfer to a network or other hospital is precluded due to inclement weather or other emergency conditions.

(4) EMERGENCY CARE SERVICES. (a) A critical access hospital shall make emergency services available on a 24-hour-a-day-basis and in accordance with the rural health plan.

(b) Emergency services shall be provided by a practitioner with training or experience in emergency care who is on call and immediately available by telephone or radio contact, and available on-site within 30 minutes on a 24-hour-a-day basis. In this paragraph, "practitioner" means a physician, a nurse practitioner or a physician assistant.

(5) STAFFING. (a) General. A critical access hospital shall comply with the provisions of subchs. III and IV only when the facility has one or more patients receiving care in the facility. When the facility does not have any inpatients, the facility need not comply with the federal conditions of participation of a hospital under medicare relating to the number of hours during a day, or days during a week, in which the facility must be open, and with the provisions of subchs. III and IV relating to staffing requirements, except that the facility is required to make available emergency care services pursuant to sub. (4) and shall have registered nurses available on a 24-hour basis as required by s. HFS 124.13(1)(a).

(b) Inpatient care services. Inpatient care under sub. (3) may be provided by a physician assistant, nurse practitioner or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility.

(c) Special services. A critical access hospital may make available any services provided by staff under ss. HFS 124.15, 124.16, 124.17, 124.18, 124.19, 124.20, 124.21, 124.22, 124.23 or 124.25 on a part-time, off-site basis under arrangements as specified in 42 USC 1395x(e).

(6) REFERRAL AGREEMENT. A critical access hospital shall have a written agreement with one or more network hospitals or another full-time hospital, which shall address all of the following:

- (a) Transfer and referral of patients from the critical access hospital.
- (b) Development and use of communication systems.
- (c) Provision of emergency and non-emergency transportation.
- (d) Credentialing of professional staff and quality assurance.

HFS 124.41 RURAL HEALTH PLAN. Before implementation of the medicare rural hospital flexibility program pursuant to 42 USC 1395i-4 for the establishment of critical access hospitals, the department shall develop a rural health plan. The rural health plan shall be submitted to the federal health care financing administration for approval.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24(1)(c) Stats.

Wisconsin Department of Health and  
Family Services

Dated: August 31, 1998

By: 

Joe Leean  
Secretary

SEAL:

**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**

**CRITICAL ACCESS HOSPITALS**

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget     Yes     No

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive     Mandatory  
2.  Decrease Costs  
 Permissive     Mandatory

3.  Increase Revenues  
 Permissive     Mandatory  
4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties     Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This order amends the Department's rules for hospitals to enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access hospitals," which will permit them to reduce their costs but still continue to be approved by the Department as hospitals and certified by the federal Health Care Financing Administration to receive Medicare funding for care provided to Medicare recipients.

The changes made by this order to ch. HFS 124 will not affect the expenditures or revenues of state government or local governments.

Several hospitals in rural Wisconsin are in jeopardy of having to close because of changes in the health care industry which have resulted in greatly reduced inpatient care in recent years with consequent loss of revenues on which the hospitals have depended. The federal government has developed a Medicare Rural Hospital Flexibility Program to enable a rural hospital that meets specified criteria to convert from a full service hospital to a limited service critical access hospital and continue to receive Medicare funding. In Wisconsin, for rural hospitals to take advantage of this change in federal law, the hospital approval program statutes had to be amended to accommodate "critical access hospitals," and in particular to permit the Department to designate a hospital as meeting the federal requirements for a critical access hospital. A recent session law, 1997 Wisconsin Act 237, modified the statutory definition of "hospital" and added a definition for "critical access hospital." The Department is implementing those changes through this order. Any costs to the Department for necessary surveying to enable it to determine if an applicant hospital meets the federal requirements were taken into consideration during legislative deliberations on the bill that became Act 237.

Two of the 33 rural hospitals in the state that could be eligible for designation as critical access hospitals are operated by local governments. There is no requirement that a rural hospital apply for designation, but if it does its financial situation will likely improve.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)

H&FS/ Lillian Redding, 266-8482

Authorized Signature/Telephone No.

  
Richard W. Lorang, 266-9622

Date

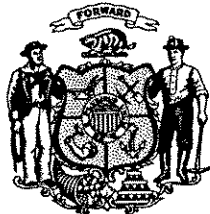
7-2-98

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-134**

AN ORDER to amend HFS 124.02 (6), (12) and (19); to repeal and recreate HFS 124.02 (21); and to create HFS 124.02 (1m) and (10m) and subchapter VI of chapter HFS 124, relating to critical access hospitals.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

09-03-98 RECEIVED BY LEGISLATIVE COUNCIL.  
10-02-98 REPORT SENT TO AGENCY.

RNS:JLK:kjf;jt

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

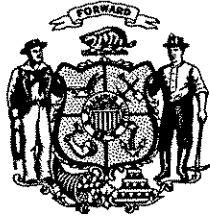


# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 98-134

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. In s. HFS 124.02 (6), the paragraph letters (b) and (c) should also be underscored. [See s. 1.06 (1), Manual.] Also, in par. (a), the phrase "hereinafter designated patients," should be deleted. The word "patient" is not used again in the subsection. Also, "hereinafter" is a vague term that does not tell a reader the applicability of the phrase.

b. The second sentence of s. HFS 124.41 should be rewritten in the active voice, i.e., "The department shall submit . . ."

#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. In SECTIONS 3 and 4, the four references to s. HFS 124.03 should be changed to s. HFS 124.02.

b. In s. HFS 124.39 (3) (b), the reference to "85.645" should be changed to "485.645".

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis in the Transmittal to the Legislative Council Rules Clearinghouse and the fiscal estimate refer to critical access hospitals as being able to receive Medicare funding for care provided to Medicare patients. In contrast, the analysis in the proposed order refers to a critical access hospital as being able to receive Medicare *and Medicaid* funding for care provided to Medicare *and Medicaid* patients. These should be consistent.

b. In SECTION 4, "SECTOPM" should be changed to "SECTION."

c. In s. HFS 124.38 (2), the phrase "critical hospital" should be changed to "critical access hospital."

d. In s. HFS 124.39 (2) (b), it appears that the phrase "certification as a critical access hospital" should be changed to a phrase such as "certification as a necessary provider of health care services to residents in the area." Unless this change is made, s. HFS 124.39 (2) (b) and (3) (b) will be inconsistent.

e. In the last line of s. HFS 124.39 (3) (b), "certification the designation" should be changed to "certification of the designation."

f. In s. HFS 124.40 (6) (intro.), the reference to having a "written agreement with one or more network hospitals *or another full-time hospital*" (emphasis added) is confusing. Section HFS 124.38 (2) defines a "network hospital" as a full-time, general hospital that has an agreement with a critical access hospital to provide care to patients transferred or referred from the critical access hospital. By definition, it appears that any full-time hospital that has an agreement with a critical access hospital covering these issues is a network hospital. Therefore, it is unclear what is meant by the term "another full-time hospital" in s. HFS 124.40 (6) (intro.).

8-29-98

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING, REPEALING AND RECREATING AND CREATING RULES

To amend HFS 124.02(6), (12) and (19); to repeal and recreate HFS 124.02(21); and to create HFS 124.02(1m) and (10m) and subchapter VI of chapter HFS 124, relating to critical access hospitals.

Analysis Prepared by the Department of Health and Family Services

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare and Medicaid funding for care provided to Medicare and Medicaid recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105-33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24-hour emergency care services; is limited to providing not more than 15 acute care inpatient beds; may not provide inpatient care for a patient for a period exceeding 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part-time, off-site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re-defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i - 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a part-time and off-site basis and a requirement for a written agreement with one or more full-time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering

closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas. Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital.

The Department's authority to amend, repeal and recreate and create these rules is found in s. 50.36(1), Stats. The rules interpret ss. 50.33(1g) and 50.33(2)(c), Stats., as affected by 1997 Wisconsin Act 237.

*scribble*  
SECTION 1. HFS 124.02(1m) is created to read:

HFS 124.02(1m) "Critical access hospital" means a hospital that is designated by the department as meeting the requirements of 42 USC 1395i-4(c)(2)(B) and is federally certified as meeting the requirements of 42 USC 1395i-4(e).

SECTION 2. HFS 124.02(6) is amended to read:

*no*  
HFS 124.02(6) (a) "Hospital" means any building, structure, institution or place offering inpatient, overnight care on a 24-hour-a-day basis, or on an as-needed basis in the case of a critical access hospital, and devoted primarily to the maintenance and operation of facilities for ~~diagnosing, treating, and providing, the diagnosis, treatment of and~~ medical or surgical care for 3 or more ~~unrelated nonrelated~~ individuals, hereinafter designated patients, who have a physical or mental suffering from illness, disease, injury, a rehabilitative condition or are pregnant, or disability, whether physical or mental, and including pregnancy and which regularly makes making available at least clinical laboratory services, diagnostic x-ray services and treatment facilities for surgery, or obstetrical care or other definitive medical treatment.

*new?*  
(b) "Hospital" may include, but is not limited to, related facilities such as outpatient facilities, nurses', interns' and residents' quarters, training facilities and central service facilities operated in connection with the hospital.

(c) "Hospital" includes a special hospital.

SECTION 3. HFS 124.03(10m) is created to read:

HFS 124.03(10m) "Medicare" means the health insurance program operated by the U.S. department of health and human services under 42 USC 1395 to 1395 ccc and 42 CFR ch.IV, subch.B.

SECTOPM 4. HFS 124.03(12) and (19) are amended to read:

HFS 124.03(12) "Physician's Physician assistant" means a person certified under ch. 448, Stats., to perform as a physician's assistant patient services under the supervision and direction of a licensed physician.

(19) "Registered nurse" means a person who ~~holds a certificate of registration~~ is licensed as a registered nurse under ch. 441, Stats.

SECTION 5. HFS 124.02(21) is repealed and recreated to read:

HFS 124.02(21) "Special hospital" means a hospital that provides a limited type of medical or surgical care, such as an orthopedic hospital, a children's hospital, a critical access hospital, a psychiatric hospital or a maternity hospital.

SECTION 6. Subchapter VI of chapter HFS 124 is created to read:

SUBCHAPTER VI—CRITICAL ACCESS HOSPITALS

HFS 124.37 APPLICABILITY. This subchapter applies to the department and to all hospitals designated by the department as critical access hospitals. *does not apply*

HFS 124.38 DEFINITIONS. In this subchapter:

- (1) "Clinical nurse specialist" means a registered nurse who is currently certified as a clinical nurse specialist by a national certifying body that is recognized by the state board of nursing.
- (2) "Network hospital" means a full-time, general hospital that has an agreement with a critical access hospital to provide ongoing acute care services and other services for patients transferred or referred from the critical hospital.
- (3) "Nurse practitioner" means a registered nurse who is currently certified as a nurse practitioner by a national certifying body that is recognized by the state board of nursing.
- (4) "Rural health plan" means a plan approved by the federal health care financing administration that describes how the department will implement and administer the federal medicare rural hospital flexibility program—critical access hospitals—under 42 USC 1395i-4.

HFS 124.39 DESIGNATION AS A CRITICAL ACCESS HOSPITAL. (1) ELIGIBILITY. To be eligible for designation as a critical access hospital, a hospital shall be all of the following:

- (a) A nonprofit or public hospital approved by the department under this chapter to operate as a hospital.
- (b) Located in an area outside of a metropolitan statistical area as defined in 42 USC 1395ww(d).
- (c) Located more than a 35-mile drive from another hospital or certified by the department under sub. (2) as a necessary provider of health care services to residents in the area.
- (d) A hospital that has a provider agreement to participate in medicare in accordance with 42 CFR 485.612.
- (e) A hospital that has not been designated by the federal health care financing administration as an urban hospital for purposes of medicare reimbursement.

(2) APPLICATION FOR CERTIFICATION AS A NECESSARY PROVIDER FOR AN AREA.

- (a) A hospital meeting the criteria under sub. (1)(a), (b),(d) and (e) may apply to the department for certification as a necessary provider of health care services to residents in its area if it cannot meet the criterion under sub. (1)(c) that it be located more than a 35-mile drive from another hospital. Application shall be made in accordance with a format provided by the department. *[Handwritten mark]*

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

- (b) Upon receipt of a completed application from a hospital for certification as a critical access hospital, the department shall review the application and shall approve or disapprove it within 60 days of receipt.

(3) APPLICATION FOR CRITICAL ACCESS HOSPITAL STATUS. (a) A hospital eligible under sub. (1) for designation as a critical access hospital may apply to the department for designation. Application shall be made in accordance with a format provided by the department.

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

(b) Upon receipt of a completed application from a hospital for designation as a critical access hospital, the department shall review the application and shall determine if the applicant meets the federal conditions of participation in medicare for critical access hospitals under 42 CFR 485.601 to 485.645. If the applicant hospital meets those federal conditions of participation and all requirements under ss. HFS 124.40 and 124.41, the department shall, within 90 days after receipt of a completed application, certify the hospital as a critical access hospital, notify the hospital in writing of its action and submit its certification the designation to the federal health care financing administration for acceptance. X

(c) Following notification by the federal health care financing administration that it has accepted the department's certification, the department shall issue a certificate of approval that establishes the applicant's critical access hospital status.

HFS 124.40 REQUIREMENTS FOR A CRITICAL ACCESS HOSPITAL. (1) OPERATION AS A HOSPITAL. A critical access hospital shall comply with all provisions of this chapter, except as provided in this section.

(2) BED COMPLEMENT. (a) A critical access hospital shall maintain no more than a total of 15 beds to be used exclusively for acute inpatient care.

(b) If the critical access hospital has an agreement established under 42 USC 1395tt governing the hospital's maintenance of swing beds, the critical access hospital may maintain up to a total of 25 beds, of which no more than 15 beds may be used exclusively for acute inpatient use.

(3) LIMITS ON ACUTE INPATIENT STAYS. A critical access hospital shall provide inpatient care for periods not to exceed 96 hours, unless a longer inpatient stay is required because transfer to a network or other hospital is precluded due to inclement weather or other emergency conditions.

(4) EMERGENCY CARE SERVICES. (a) A critical access hospital shall make emergency services available on a 24-hour-a-day-basis and in accordance with the rural health plan.

(b) Emergency services shall be provided by a practitioner with training or experience in emergency care who is on call and immediately available by telephone or radio contact, and available on-site within 30 minutes on a 24-hour-a-day basis. In this paragraph, "practitioner" means a physician, a nurse practitioner or a physician assistant.

(5) STAFFING. (a) General. A critical access hospital shall comply with the provisions of subchs. III and IV only when the facility has one or more patients receiving care in the facility. When the facility does not have any inpatients, the facility need not comply with the federal conditions of participation of a hospital under medicare relating to the number of hours during a day, or days during a week, in which the facility must be open, and with the provisions of subchs. III and IV relating to staffing requirements, except that the facility is required to make available emergency care services pursuant to sub. (4) and shall have registered nurses available on a 24-hour basis as required by s. HFS 124.13(1)(a).

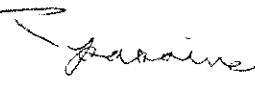
(b) Inpatient care services. Inpatient care under sub. (3) may be provided by a physician assistant, nurse practitioner or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility.

(c) Special services. A critical access hospital may make available any services provided by staff under ss. HFS 124.15, 124.16, 124.17, 124.18, 124.19, 124.20, 124.21, 124.22, 124.23 or 124.25 on a part-time, off-site basis under arrangements as specified in 42 USC 1395x(e).

(6) REFERRAL AGREEMENT. A critical access hospital shall have a written agreement with one or more network hospitals or another full-time hospital, which shall address all of the following:

- (a) Transfer and referral of patients from the critical access hospital.
- (b) Development and use of communication systems.
- (c) Provision of emergency and non-emergency transportation.
- (d) Credentialing of professional staff and quality assurance.

HFS 124.41 RURAL HEALTH PLAN. Before implementation of the medicare rural hospital flexibility program pursuant to 42 USC 1395i-4 for the establishment of critical access hospitals, the department shall develop a rural health plan. The rural health plan shall be submitted to the federal health care financing administration for approval.



The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and Family Services

Dated:

By: \_\_\_\_\_

Joe Leean  
Secretary

SEAL:



Tommy G. Thompson  
Governor

Joe Leraan  
Secretary



**State of Wisconsin**

**Department of Health and Family Services**

OFFICE OF LEGAL COUNSEL

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P.O. BOX 7850  
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TELEPHONE: (608) 266-8428

October 30, 1998

The Honorable Brian Rude, President  
Wisconsin State Senate  
1 East Main, Suite 402  
Madison, WI 53702

NOV 02 1998

The Honorable Scott Jensen, Speaker  
Wisconsin State Assembly  
1 East Main, Suite 402  
Madison, WI 53702

Re: Clearinghouse Rule 98-134  
HFS 124.02 & 124.37 to 124.41, relating to critical access hospitals.


Gentlemen:

In accordance with the provisions of s. 227.19(2), Stats., you are hereby notified that the above-mentioned rule is in final draft form. This notice and the report required by s. 227.19(3), Stats., are submitted herewith in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rule, please contact Lillian Redding at 266-8482.

Sincerely,

  
Paul E. Menge  
Administrative Rules Manager

cc. Gary Poulson, Deputy Revisor of Statutes  
— Senator Robert Welch, JCRAR  
Representative Glenn Grothman, JCRAR  
Lillian Redding, Division of Supportive Living  
Kevin Lewis, Secretary's Office



10-29-98

PROPOSED ADMINISTRATIVE RULES—HFS 124.02 & 124.37 to 124.41  
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES  
PURSUANT TO S. 227.19(3), STATS.

Need for Rules

Changes made in s. 50.33, Stats., by 1997 Wisconsin Act 237 permit the operation of a new category of hospital called a critical access hospital. The definition for this type of facility was incorporated in amendments to the federal Social Security Act by P.L. 105-33, the Balanced Budget Act of 1997. The critical access hospital is a rural limited medical services hospital which provides short-term hospital services to the surrounding area and is allowed to reduce costs while being recognized as a hospital for Medicare reimbursement of the costs of covered services. The critical access hospital licensure status is a voluntary option.

Rural hospitals may apply for this licensure status if they have been identified in the Wisconsin Rural Health Plan. An applicant must be a nonprofit or public facility that is located in a rural area and is more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. A critical access hospital must make available 24-hour emergency care services; is limited to providing not more than 15 acute care inpatient beds; as a rule cannot provide inpatient care for a patient for a period exceeding 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications and physician assistants, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as certain laboratory work, provided on a part-time, off-site basis.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 8 to 10 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas. Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 allow the Department to designate a rural hospital as a critical access hospital.

These are replacement permanent rules for similar emergency rules that were published on September 12, 1998.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse were accepted.

Public Hearing

The Department held one public hearing on the proposed rules. The hearing was held in Madison on October 13, 1998. One person attended the hearing. Tom Jones, Vice President of Information Services for the Wisconsin Health & Hospital Association, spoke in strong support of the proposed rules that will implement the critical access hospital in Wisconsin. He spoke both for the Association and individual rural hospitals. Written questions were received from the Wisconsin Health & Hospital Association's general counsel, Tim Hartin, and those questions were answered to Mr.

Hartin's satisfaction. In response to his suggestion, paragraph (a) in the definition of "hospital" was reformatted and a reference to the critical access hospital was added at the end.

Final Regulatory Flexibility Analysis

These rules apply to the Department and to nonprofit or public hospitals in rural areas of the state that wish to apply to the Department for designation as critical access hospitals and to operate as critical access hospitals. The rules do not directly apply to small businesses as "small business " is defined in s. 227.114(1)(a), Stats. They will not add to reporting or record-keeping requirements, nor will compliance with them require professional skills that the hospitals do not have now.

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING, REPEALING AND RECREATING AND CREATING RULES

To amend HFS 124.02(6), (12) and (19); to repeal and recreate HFS 124.02(21); and to create HFS 124.02(1m) and (10m) and subchapter VI of chapter HFS 124, relating to critical access hospitals.

Analysis Prepared by the Department of Health and Family Services

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare funding for care provided to Medicare recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105-33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24-hour emergency care services; is limited to providing not more than 15 acute care inpatient beds; may not provide inpatient care for a patient for a period exceeding 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part-time, off-site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re-defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i - 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a part-time and off-site basis and a requirement for a written agreement with one or more full-time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 8 to 10 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining

their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas. Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital.

The Department's authority to amend, repeal and recreate and create these rules is found in s. 50.36(1), Stats. The rules interpret ss. 50.33(1g) and 50.33(2)(c), Stats., as affected by 1997 Wisconsin Act 237.

SECTION 1. HFS 124.02(1m) is created to read:

HFS 124.02(1m) "Critical access hospital" means a hospital that is designated by the department as meeting the requirements of 42 USC 1395i-4(c)(2)(B) and is federally certified as meeting the requirements of 42 USC 1395i-4(e).

SECTION 2. HFS 124.02(6) is amended to read:

HFS 124.02(6) (a) "Hospital" means any building, structure, institution or place ~~offering that does~~ all of the following:

1. ~~Offers inpatient, overnight care on a 24-hour-a-day basis, or on an as-needed basis in the case of a critical access hospital and.~~

2. ~~devoted~~ Devotes itself primarily to the maintenance and operation of facilities for diagnosing, treating, and providing, the diagnosis and treatment of, and medical or surgical care for, 3 or more unrelated nonrelated individuals, designated "patients" in this chapter, who have a physical or mental suffering from illness, disease, injury, a rehabilitative condition or are pregnant, or disability, whether physical or mental, or who are pregnant, and which.

3. ~~regularly~~ Regularly makes available at least clinical laboratory services, diagnostic x-ray services and treatment facilities for surgery, or obstetrical care or other definitive medical treatment, except as otherwise provided for critical access hospitals in this chapter.

(b) "Hospital" may include, but is not limited to, related facilities such as outpatient facilities, nurses', interns' and residents' quarters, training facilities and central service facilities operated in connection with the hospital.

(c) "Hospital" includes a special hospital.

SECTION 3. HFS 124.02(10m) is created to read:

HFS 124.02(10m) "Medicare" means the health insurance program operated by the U.S. department of health and human services under 42 USC 1395 to 1395 ccc and 42 CFR ch.IV, subch.B.

SECTION 4. HFS 124.02(12) and (19) are amended to read:

HFS 124.02(12) "~~Physician's~~ Physician assistant" means a person certified under ch. 448, Stats., to perform ~~as a physician's assistant~~ patient services under the supervision and direction of a licensed physician.

(19) "Registered nurse" means a person who ~~holds a certificate of registration~~ is licensed as a registered nurse under ch. 441, Stats.

SECTION 5. HFS 124.02(21) is repealed and recreated to read:

HFS 124.02(21) "Special hospital" means a hospital that provides a limited type of medical or surgical care, such as an orthopedic hospital, a children's hospital, a critical access hospital, a psychiatric hospital or a maternity hospital.

SECTION 6. Subchapter VI of chapter HFS 124 is created to read:

#### SUBCHAPTER VI—CRITICAL ACCESS HOSPITALS

HFS 124.37 APPLICABILITY. This subchapter applies to the department and to all hospitals designated by the department as critical access hospitals.

HFS 124.38 DEFINITIONS. In this subchapter:

(1) "Clinical nurse specialist" means a registered nurse who is currently certified as a clinical nurse specialist by a national certifying body that is recognized by the state board of nursing.

(2) "Network hospital" means a full-time, general hospital that has an agreement with a critical access hospital to provide ongoing acute care services and other services for patients transferred or referred from the critical access hospital.

(3) "Nurse practitioner" means a registered nurse who is currently certified as a nurse practitioner by a national certifying body that is recognized by the state board of nursing.

(4) "Rural health plan" means a plan approved by the federal health care financing administration that describes how the department will implement and administer the federal medicare rural hospital flexibility program—critical access hospitals—under 42 USC 1395i--4.

HFS 124.39 DESIGNATION AS A CRITICAL ACCESS HOSPITAL. (1) ELIGIBILITY. To be eligible for designation as a critical access hospital, a hospital shall be all of the following:

(a) A nonprofit or public hospital approved by the department under this chapter to operate as a hospital.

(b) Located in an area outside of a metropolitan statistical area as defined in 42 USC 1395ww(d).

(c) Located more than a 35-mile drive from another hospital or certified by the department under sub. (2) as a necessary provider of health care services to residents in the area.

(d) A hospital that has a provider agreement to participate in medicare in accordance with 42 CFR 485.612.

(e) A hospital that has not been designated by the federal health care financing administration as an urban hospital for purposes of medicare reimbursement.

(2) APPLICATION FOR CERTIFICATION AS A NECESSARY PROVIDER FOR AN AREA.

(a) A hospital meeting the criteria under sub. (1)(a), (b), (d) and (e) may apply to the department for certification as a necessary provider of health care services to residents in its area if it cannot meet the criterion under sub. (1)(c) that it be located more than a 35-mile drive from another hospital. Application shall be made in accordance with a format provided by the department.

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

(b) Upon receipt of a completed application from a hospital for certification as a necessary provider of health care services to residents in the area, the department shall review the application and shall approve or disapprove it within 60 days of receipt.

(3) APPLICATION FOR CRITICAL ACCESS HOSPITAL STATUS. (a) A hospital eligible under sub. (1) for designation as a critical access hospital may apply to the department for designation. Application shall be made in accordance with a format provided by the department.

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box 309, Madison, WI 53701-0309; (608) 266-7297.

(b) Upon receipt of a completed application from a hospital for designation as a critical access hospital, the department shall review the application and shall determine if the applicant meets the federal conditions of participation in medicare for critical access hospitals under 42 CFR 485.601 to 485.645. If the applicant hospital meets those federal conditions of participation and all requirements under ss. HFS 124.40 and 124.41, the department shall, within 90 days after receipt of a completed application, certify the hospital as a critical access hospital, notify the hospital in writing of its action and submit its certification of the designation to the federal health care financing administration for acceptance.

(c) Following notification by the federal health care financing administration that it has accepted the department's certification, the department shall issue a certificate of approval that establishes the applicant's critical access hospital status.

HFS 124.40 REQUIREMENTS FOR A CRITICAL ACCESS HOSPITAL. (1) OPERATION AS A HOSPITAL. A critical access hospital shall comply with all provisions of this chapter, except as provided in this section.

(2) BED COMPLEMENT. (a) A critical access hospital shall maintain no more than a total of 15 beds to be used exclusively for acute inpatient care.

(b) If the critical access hospital has an agreement established under 42 USC 1395tt governing the hospital's maintenance of swing beds, the critical access hospital may maintain up to a total of 25 beds, of which no more than 15 beds may be used exclusively for acute inpatient use.

(3) LIMITS ON ACUTE INPATIENT STAYS. A critical access hospital shall provide inpatient care for periods not to exceed 96 hours, unless a longer inpatient stay is required because transfer to a network or other hospital is precluded due to inclement weather or other emergency conditions.

(4) EMERGENCY CARE SERVICES. (a) A critical access hospital shall make emergency services available on a 24-hour-a-day-basis and in accordance with the rural health plan.

(b) Emergency services shall be provided by a practitioner with training or experience in emergency care who is on call and immediately available by telephone or radio contact, and available on-site within 30 minutes on a 24-hour-a-day basis. In this paragraph, "practitioner" means a physician, a nurse practitioner or a physician assistant.

(5) STAFFING. (a) General. A critical access hospital shall comply with the provisions of subchs. III and IV only when the facility has one or more patients receiving care in the facility. When the facility does not have any inpatients, the facility need not comply with the federal conditions of participation of a hospital under medicare relating to the number of hours during a day, or days during a week, in which the facility must be open, and with the provisions of subchs. III and IV relating to staffing requirements, except that the facility is required to make available emergency care services pursuant to sub. (4) and shall have registered nurses available on a 24-hour basis as required by s. HFS 124.13(1)(a).

(b) Inpatient care services. Inpatient care under sub. (3) may be provided by a physician assistant, nurse practitioner or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility.

(c) Special services. A critical access hospital may make available any services provided by staff under ss. HFS 124.15, 124.16, 124.17, 124.18, 124.19, 124.20, 124.21, 124.22, 124.23 or 124.25 on a part-time, off-site basis under arrangements as specified in 42 USC 1395x(e).

(6) REFERRAL AGREEMENT. A critical access hospital shall have a written agreement with one or more network hospitals which shall address all of the following:

- (a) Transfer and referral of patients from the critical access hospital.
- (b) Development and use of communication systems.
- (c) Provision of emergency and non-emergency transportation.
- (d) Credentialing of professional staff and quality assurance.

HFS 124.41 RURAL HEALTH PLAN. Before implementation of the medicare rural hospital flexibility program pursuant to 42 USC 1395i-4 for the establishment of critical access hospitals, the department shall develop a rural health plan. The department shall submit the rural health plan to the federal health care financing administration for approval.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and  
Family Services

Dated:

By: \_\_\_\_\_

Joe Leean  
Secretary

SEAL: