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☞ Details: Emergency Rule extension requests by Department of Health and Family Services

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

June 27, 2003

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison, Wisconsin 53708-8952

Dear Representative Grothman:

The Department of Health and Family Services has an emergency rulemaking order in effect that will expire before the emergency rules are replaced by permanent rules unless the effective period of the emergency order is extended. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the effective period of the emergency order by ~~30~~ ⁶⁰ days as indicated below.

The emergency rules relate to the Department's requiring EMTs and first responders to receive training for responding to acts of terrorism. 2001 Wisconsin Act 109 amended sections 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. of the statutes by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department revised the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and EMTs- Basic IV (found in ch. HFS 110), EMTs- Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.)

The rule changes removed any question of whether the Department had the authority to require persons to receive training for acts of terrorism. Such training is needed to promote the public's health and safety and, due to the statutory effective date of January 1, 2003, the Department promulgated the rule changes through an emergency order. The emergency rulemaking order amending and creating rules was published and effective on **December 31, 2002**. On May 27th, the effective period of the emergency rule was extended by your Committee for 60 days on the condition that the Department work with

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Representative Grothman

June 27, 2003

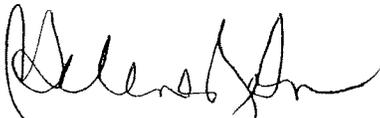
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the assigned legislative standing committees to resolve issues raised by both committees with respect to the final proposed permanent rules. On June 24th, the Department met with all involved parties, including Dave Bloom, a representative of the Wisconsin Fire Chiefs Association and resolved to the satisfaction of the Association the concerns the Association has expressed about the proposed rule. The Department explained that fire departments have a great deal of flexibility in complying with the rule insofar as fire department staff may instruct fire station personnel with respect to the required training for responding to acts of terrorism. The Department clarified that the training does not need to be obtained through technical colleges. The Department will state this policy, including who may teach the required training and how the training may be delivered, in writing, and transmit the document to Mr. Bloom for review. If, in the opinion of Mr. Bloom, the Department has satisfactorily addressed all of the outstanding issues, the Department will transmit Mr. Bloom's confirmation to Senators Roessler and Brown who will expedite the rule's filing.

The existing extension of the emergency rule will expire after July 28th, 2003, unless extended. Assuming the Department files the permanent rulemaking order by July 15th, the order will take effect on September 1st. Therefore, the Department requests a 34-day extension of this rulemaking order.

A copy of the emergency rulemaking order is attached to this letter. If you have any questions about the rules, you may contact Jon Morgan in the Division of Public Health at 266-9781.

Sincerely,



Helene Nelson
Secretary

Attachments

cc Senator Leibham
Gary Radloff

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING AND CREATING RULES

FINDING OF EMERGENCY

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

2001 Wisconsin Act 109 amended sections 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department must revise the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and EMTs-Basic IV (found in ch. HFS 110), EMTs- Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.)

The required rule changes will remove any question of whether the Department had the authority to require persons to receive training for acts of terrorism. Such training is needed to promote the public's health and safety and due to the statutory effective date of January 1, 2003, the Department is promulgating these rule changes through an emergency order. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

ORDER

Pursuant to the authority vested in the Department of Health and Family Services by ss. 146.50 (6) (b) 2. and (13) (a), 227.24 (1) and 250.04 (7), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 146.50 (6) (b) 2., (8) (b) 3., (c) and (13) (a) and 250.04 (7), Stats.

SECTION 1. HFS 110.07 (3) (c) 2. and (4) (a) and (b) are amended to read:

HFS 110.07 (3) (c) 2. The training shall include the knowledge and skills objectives contained in the U.S. department of transportation/national highway traffic safety administration's national standard curriculum for refresher training of EMTs–basic, 1994 edition, and additional training as approved by the department, including training for response to acts of terrorism.

(4) (a) EMT–BASIC TRAINING COURSE CONTENT AND HOURS. (a) The national standard curriculum for training EMTs–basic shall be used as the basis for a training course. Training shall also include instruction on responding to acts of terrorism. Additional skills training requires approval of the department. Any deviation from the curriculum shall be submitted separately and approved by the department prior to its use in the course.

(b) An EMT–basic training course shall have a minimum of 110 hours of instruction and may not exceed 140 hours of mandatory attendance.

SECTION 2. HFS 111.06 (1) (c) 1. is amended to read:

HFS 111.06 (1) (c) 1. A description of the capabilities of the organization to train EMTs–intermediate in the provision of emergency medical care in pre–hospital, interfacility and hospital settings. The training shall include training covered in the national standard curriculum for training EMTs–intermediate and shall include additional training approved by the department, including instruction on responding to acts of terrorism.

SECTION 3. HFS 112.04 (5) (f) 2. is amended to read:

HFS 112.04 (5) (f) 2. A licensee who submits evidence of having successfully completed, within the 24 months immediately preceding the license renewal date, an EMT paramedic training course, including the knowledge and skills objectives of the National Standard Curriculum for Training EMTs–Paramedic, as approved by the department, including training for response to acts of terrorism, shall be considered to have met the requirement of subd. 1. b.

SECTION 4. HFS 112.06 (1) (c) 1. is amended to read:

HFS 112.06 (1) (c) 1. A description of the capabilities of the organization to train EMTs–paramedic in the provision of emergency medical care in pre–hospital, interfacility and hospital settings. The training shall include training covered in the National Standard Curriculum for Training EMTs–Paramedic and training for response to acts of terrorism and may include additional training approved by the department.

SECTION 5. HFS 113.04 (6) (a) 1m. is created to read:

HFS 113.04 (6) (a) 1m. Completion of training on responding to acts of terrorism.

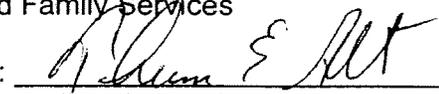
SECTION 6. HFS 113.04 (10) (b) 3. is amended to read:

HFS 113.04 (10) (b) 3. Documentation that the certificate holder has, during the biennial period immediately preceding application, successfully completed the national standard first responder refresher course or equivalent training, including training for response to acts of terrorism, as determined by the department; and

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.

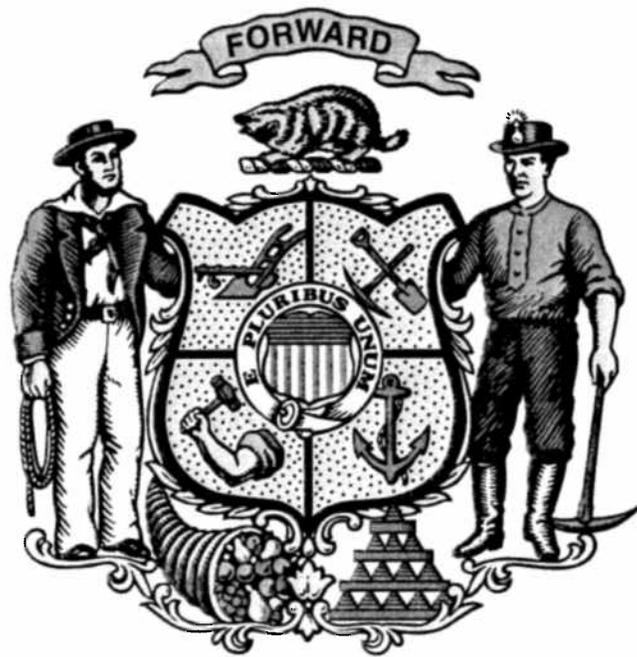
Wisconsin Department of Health
and Family Services

Dated: December 27, 2002

By: 

for Phyllis Dubé
Secretary

SEAL:





State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

July 17, 2003

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison, Wisconsin 53708-8952

Dear Representative Grothman:

The Department of Health and Family Services has an emergency rulemaking order in effect that will expire before the emergency rules are replaced by permanent rules unless the effective period of the emergency order is extended. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the effective period of the emergency order by 44 days as indicated below.

As explained in the finding of emergency in the emergency rulemaking order, the emergency rules permit St. Mary's Hospital in Superior to be reclassified as a rural hospital and begin the approval process for designation as a Critical Access Hospital. Designation as a Critical Access Hospital and the attendant receipt of cost-based reimbursement promotes St. Mary's continued viability.

The emergency rulemaking order creating rules was published and effective on **March 21, 2003**, and **will expire on August 18, 2003**, unless extended. The Department held a hearing on the rules on June 20, 2003 in Superior. All of the comments the Department received were supportive of the rule. The Department transmitted its report to the legislature, including the final proposed permanent rules to the Presiding Officers of the Senate and Assembly on July 7, 2003. The Department hopes to file the rules by August 15, 2003 for an October 1, 2003, effective date. Therefore, I request an extension of the effective period of the emergency rules by **44 days**, through September 30, 2003.

A copy of the emergency rulemaking order and the report to the legislature, including the final proposed permanent rules are attached to this letter. If you have any questions about the rules, you may contact Cheryl Bell-Marek in the Division of Disability and Elder Services at 264-9896.

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Representative Grothman
July 17, 2003
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Sincerely,



Helene Nelson
Secretary

Attachments

cc Senator Leibham
Senator Alan Lasee
Speaker John Gard
Gary Radloff

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING AND CREATING RULES

FINDING OF EMERGENCY

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

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost-based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of chapter HFS 124 governs the Department's designation and regulation of CAHs. Designation as a CAH and receipt of cost-based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost-based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7-8 million and it employs the equivalent of about 160 persons full-time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in chapter HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, through this rulemaking order, the Department is modifying provisions in subchapter VI of chapter HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital.

ORDER

↳ will this impact other institutions

Pursuant to the 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 creates rules interpreting s. 50.33 (1g) and (2) (c), Stats.

SECTION 1. HFS 124.38 (5) is created to read:

HFS 124.38 (5) "Rural hospital" means a hospital that was initially approved as a hospital prior to January 1, 2003 and is located in a county that has at least a portion of a rural census tract of a Metropolitan Statistical Area (MSA) as determined under the most recent version of the Goldsmith Modification as provided in 42 CFR 412.103(a)(1).

Note: The most recent version of the Goldsmith Modification as determined by the Office of Rural Health Policy (ORHP) of the Health Resources and Services Administration is available via the ORHP website at <http://www.nal.usda.gov/orph> or from the U.S. Department of Health and Human Services, Health Resources and Services Administration, Office of Rural Health Policy, 5600 Fishers Lane, Room 9-05, Rockville, MD 20857. 42 CFR 412.103 of the federal regulations addresses hospitals located in urban areas that want to apply for reclassification as rural hospitals.

SECTION 2. HFS 124.39 (1) (intro) and (e) are amended to read:

HFS 124.39 Designation as a critical access hospital. (1) ELIGIBILITY. Except as provided under sub. (2) (a), ~~To~~ be eligible for designation as a critical access hospital, a hospital shall be all of the following:

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

SECTION 3. HFS 124.39 (2) (a) and (3) are amended to read:

HFS 124.39 (2) APPLICATION FOR CERTIFICATION AS A NECESSARY PROVIDER FOR AN AREA. (a) 1. 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.

2. A rural hospital meeting the criteria under sub. (1) (a), (d) and (e) may apply to the department for certification as a necessary provider of health care services to residents in its area if the rural hospital cannot meet the criteria under sub. (1) (b) and (c).

Note: To obtain the format for the application, write or phone: Bureau of Quality Assurance, P.O. Box ~~3092969~~, Madison, WI 53701-~~3092969~~; (608) 266-7297.

3. Application under subd. 1. or 2. shall be made in accordance with a format provided by the department.

(3) APPLICATION FOR CRITICAL ACCESS HOSPITAL STATUS. (a) A hospital eligible under sub. (1) or (2) (a) 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 ~~3092969~~, Madison, WI 53701-~~3092969~~; (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, and, if applicable, 42 CFR 412.103(a)(1). If the applicant hospital meets those federal ~~conditions of participation~~ regulations and all requirements under ss. HFS 124.40 and 124.41, the department shall, within 90 days after receipt of a completed application, ~~certify~~ recommend certification of 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 ~~centers for medicare and medicaid for acceptance.~~

Note: The federal Centers for Medicare and Medicaid Services will notify the Department and the applicant hospital of the certification decision.

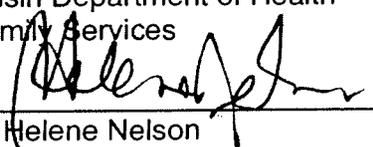
(c) Following notification by the federal ~~health care financing administration~~ centers for medicare and medicaid that it has accepted the department's certification recommendation, the department shall issue a certificate of approval that establishes the applicant's critical access hospital status.

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: March 20, 2003

By: _____


Helene Nelson
Secretary

SEAL:

AGENCY REPORT TO THE LEGISLATURE ON CLEARINGHOUSE RULE 03-042

Need for Rules

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost-based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of chapter HFS 124 governs the Department's designation and regulation of CAHs. Designation as a CAH and receipt of cost-based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost-based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7-8 million and it employs the equivalent of about 160 persons full-time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in chapter HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, the Department is proposing to modify provisions in subchapter VI of chapter HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital. To permit St. Mary's to initiate its transition to a critical access hospital, the Department issued a similar emergency order that became effective on March 21, 2003. Through this proposed permanent order, the Department is also modifying several other provisions in subch. VI of ch. HFS 124 to more closely reflect current federal regulations, the October 2001 Wisconsin Rural Hospital Flexibility Program Implementation Plan and to change the name of the federal Health Care Financing Administration to the Centers for Medicare and Medicaid Services.

Responses to Clearinghouse Recommendations

The Department accepted all of the Legislative Council's Rules Clearinghouse suggestions and comments.

Final Regulatory Flexibility Analysis

The rule changes will not affect small businesses as defined in s. 227.114 (1) (a), Stats.

Public Review

The Department held a combined public hearing on both the emergency and proposed permanent rulemaking order in Superior, Wisconsin at the Superior Public Library on June 20, 2003, beginning at 9:00 AM. The hearing officer was Janet Eakins, Section Chief, Provider Regulation and Quality Improvement Section, Bureau of Quality Assurance. The resource person was Jane Walters, Section Chief, Health and Social Services Section of the Bureau of Quality

Assurance. The hearing record remained open until June 23, 2003, for receipt of written comments. Participation in the hearing process is tabulated below. As indicated below, support for the rule was reflected by the positions indicated on the registrations or written statements filed by the hearing participants.

CAH Hearing Participation

Provided oral testimony only at hearing:	7
Provided written comments only at hearing	1
Submitted written comments outside of hearing:	11
Supports rule:	17
Observer at hearing:	1

At the public hearing, seven people testified in support of St. Mary's Hospital in Superior achieving status as a Critical Access Hospital. The majority of comments were about how St. Mary's is a vital part of the local economy and the community as a whole. Everyone who submitted testimony indicated that it is imperative that St. Mary's gain Critical Access Hospital status to ensure the hospital's future in Superior and enhance the facility's vital health care provider role. Most of the patients served by St. Mary's are generally older and less financially stable. The elderly are very reluctant to drive to Duluth Hospital in Minnesota for health care. The economics are tough in Superior and the hospital provides many services to several people in the rural area that are underprivileged. The hearing attendees also supported both the emergency and proposed permanent rule because it provides the hospital an opportunity to increase revenue through cost-based reimbursement for Medicare and Medicaid patients, which gives the hospital greater service delivery flexibility.

The following is a complete list of the people who attended the public hearing or submitted written comments on the emergency and nearly identical proposed permanent rulemaking orders. With each person's name and affiliation is an indication of the person's position on the proposed rules and whether or not the person testified or provided written comments.

Name and Address	Position	Action
Roger P. Engle, President Superior Water Light & Power 2915 Hill Avenue P.O. Box 519 Superior, WI 54880	Supports	Submitted written comments; did not attend hearing
James Zastrow, President M&I-Marshall & Ilsley Bank 1425 Tower Avenue Superior, WI 54880-1029	Supports	Submitted written comments; did not attend hearing
Timothy L. Burke, MD Associate Medical Director St. Mary's/ Duluth Clinic System (SMDC) 3500 Tower Avenue Superior, WI 54880	Supports	Submitted written comments; did not attend hearing

Patrick D. Sura, MD St. Mary's/Duluth Clinic System (SMDC) 3500 Tower Avenue Superior, WI 54880	Supports	Submitted written comments; did not attend hearing
Dave Ross, Mayor Office of the Mayor 1407 Hammond Avenue Superior, WI 54880	Supports	Submitted written comments; did not attend hearing
Larry L. Kappes, President/CEO National Bank of Commerce 1127 Tower Avenue Superior, WI 54880	Supports	Submitted written comments; did not attend hearing
Jack Culley, CEO Sailboats Inc. 250 Marina Drive Superior, WI 54880	Supports	Submitted written comments; testified at hearing
Julius E. Erlenbach, Ph.D Chancellor-UW-Superior Old Main, Room 212 Belknap & Catlin, PO Box 2000 Superior, WI 54880-4500	Supports	Submitted written comments; did not attend hearing
Wende L. Nelson, Exec. Director Lake Superior Community Health Care 2 East 5 th Street Duluth, MN 55805-1711	Supports	Submitted written comments; did not attend hearing
Andrew Lisak, Exec. Director The Development Assoc., Inc. 1205 Tower Avenue Superior, WI 54880	Supports	Submitted written comments; testified at hearing
Janet H. Murphy, Board Member St Mary's Medical Ctr, St. Mary's Hospital Superior 3 Gitchinadji Drive Superior, WI 54880	Supports	Testified at hearing
Douglas G. Finn, Chair Douglas County Board of Supervisors 1313 Belknap Street Superior, WI 54880	Supports	Submitted written comments; testified at hearing
Naomi Stein 12195 E Danielson Road Maple, WI 54854	Supports Represents the Community	Testified at hearing

<p>Kaye Tenerelli, Exec Director 809 E 8th Street Superior, WI 54880</p>	<p>Supports</p>	<p>Submitted written comments; testified at hearing</p>
<p>Sherry L. Mattson 1627 N 34th St Superior, WI 54880</p>	<p>Undecided</p>	<p>Hearing observer</p>
<p>Peter E. Person, MD, FACP, CEO St. Mary's/Duluth Clinic Health System 502 East Second Street Duluth, MN 55805</p>	<p>Supports</p>	<p>Submitted written comments; did not attend hearing</p>
<p>Stephen F. Brenton, President Wisconsin Hospital Assoc. 5721 Odana Road P.O. Box 44992 Madison, WI 53744-4992</p>	<p>Supports</p>	<p>Submitted written comments; did not attend hearing</p>
<p>Terry R. Jacobson, CEO 3500 Tower Avenue Superior, WI 54880</p>	<p>Supports</p>	<p>Submitted written comments; testified at hearing</p>

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

The Department of Health and Family Services proposes an order to amend ss. HFS 124.38 (4), 124.39 (1) (intro), (a), (b) and (e), (2) (a) and (3), 124.40 (2) (b) and (3) and 124.41 and to create ss. HFS 124.38 (5) and 124.40 (2) (c), relating to critical access hospitals.

Analysis Prepared by the Department of health and Family Services

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost-based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of chapter HFS 124 governs the Department's designation and regulation of CAHs. Designation as a CAH and receipt of cost-based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost-based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7-8 million and it employs the equivalent of about 160 persons full-time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in chapter HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, the Department is proposing to modify provisions in subchapter VI of chapter HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital. To permit St. Mary's to initiate its transition to a critical access hospital, the Department issued a similar emergency order that became effective on March 21, 2003. Through this proposed permanent order, the Department is also modifying several other provisions in subch. VI of ch. HFS 124 to more closely reflect current federal regulations, the October 2001 Wisconsin Rural Hospital Flexibility Program Implementation Plan and to change the name of the federal Health Care Financing Administration to the Centers for Medicare and Medicaid Services.

The Department's authority to amend and create these rules is found under ss. 50.36 (1) and 227.11 (2) (a), Stats. The rules interpret s. 50.33 (1g) and (2) (c), Stats.

SECTION 1. HFS 124.38 (4) is amended to read:

HFS 124.38 (4) "Rural health plan" means a plan approved by the federal health care financing administration centers for medicare and medicaid services that describes how the department will implement and administer parts of the federal medicare rural hospital flexibility program---critical access hospitals---under 42 USC 1395i---4.

SECTION 2. HFS 124.38 (5) is created to read:

HFS 124.38 (5) "Rural hospital" means a hospital that was initially approved as a hospital prior to January 1, 2003 and is located in a county that has at least a portion of a rural census tract of a Metropolitan Statistical Area (MSA) as determined under the most recent version of the Goldsmith Modification as provided in 42 CFR 412.103(a)(1).

Note: The most recent version of the Goldsmith Modification as determined by the Office of Rural Health Policy (ORHP) of the Health Resources and Services Administration is available via the ORHP website at <http://ruralhealth.hrsa.gov/pub/Goldsmith.htm> or from the U.S. Department of Health and Human Services, Health Resources and Services Administration, Office of Rural Health Policy, 5600 Fishers Lane, Room 9A-55, Rockville, MD 20857. 42 CFR 412.103 of the federal regulations addresses hospitals located in urban areas that want to apply for reclassification as rural hospitals.

SECTION 3. HFS 124.39 (1) (intro), (a), (b) and (e) are amended to read:

HFS 124.39 Designation as a critical access hospital. (1) ELIGIBILITY. ~~To~~Except as provided under sub. (2) (a), 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), or located in a rural area of an urban county.

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

SECTION 4. HFS 124.39 (2) (a) and (3) are amended to read:

HFS 124.39 (2) APPLICATION FOR CERTIFICATION AS A NECESSARY PROVIDER FOR AN AREA. (a) 1. 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.

2. A rural hospital meeting the criteria under sub. (1) (a), (d) and (e) may apply to the department for certification as a necessary provider of health care services to residents in its area if the rural hospital cannot meet the criteria under sub. (1) (b) and (c).

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

3. Application under subd. 1. or 2. 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 2969, Madison, WI 53701-2969; (608) 266-7297.

(3) APPLICATION FOR CRITICAL ACCESS HOSPITAL STATUS. (a) A hospital eligible under sub. (1) or (2) (a) 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 ~~3092969~~, Madison, WI 53701-~~3092969~~; (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, and, if applicable, 42 CFR 412.103(a)(1). If the applicant hospital meets those federal ~~conditions of participation regulations~~ and all requirements under ss. HFS 124.40 and 124.41, the department shall, within 90 days after receipt of a completed application, certify recommend certification of 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 centers for medicare and medicaid services.~~

Note: The federal Centers for Medicare and Medicaid Services will notify the Department and the applicant hospital of the certification decision.

(c) Following notification by the federal ~~health care financing administration centers for medicare and medicaid services~~ that it has accepted the department's certification recommendation, the department shall issue a certificate of approval that establishes the applicant's critical access hospital status in the state.

SECTION 5. HFS 124.40 (2) (b) is amended to read:

HFS 124.40 (2) (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 not more than 25 inpatient beds, of which no more than 15 beds may be used exclusively for acute inpatient care.

SECTION 6. HFS 124.40 (2) (c) is created to read:

HFS 124.40 (2) (c) A critical access hospital may have up to 4 additional permanently-placed 24-hour observation beds.

SECTION 7. HFS 124.40 (3) is amended to read:

HFS 124.40 (3) LIMITS ON ACUTE INPATIENT STAYS. A critical access hospital shall provide inpatient care for periods not to exceed an annual average of 96 hours, unless a per patient. The hospital shall record each patient's stay and any longer inpatient stay is required because transfer to a network or other hospital is precluded due to inclement weather or other emergency conditions.

SECTION 8. HFS 124.41 is amended to read:

HFS 124.41 Rural health plan. Before implementation of the state 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 centers for medicare and medicaid services 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: _____

Helene Nelson
Secretary

SEAL:

125 BEDS - new
Delicacy down to 25

in Superior -



Critical Access Hospital Q & A

What is a Critical Access Hospital? Critical Access Hospital (CAH) is a designation given to certain hospitals that provide, as the name suggests, critical access to care. They are by definition small (25 or fewer beds) rural hospitals that tend to treat high numbers of Medicare, Medicaid and uninsured patients. If not for the CAH designation, these hospitals would face serious fiscal challenges that would threaten their viability and access to hospital care in rural areas.

Why is Critical Access Designation So Important? Wisconsin ranks 49th in Medicare payments to hospitals, meaning that Wisconsin hospitals are grossly underpaid by the Medicare program. Put bluntly, some hospitals are able to pass on or "cost shift" these underpayments to the private sector. Others, including many rural hospitals, cannot adequately cost shift due to their high government patient load. Being designated a CAH means the federal Medicare and state Medicaid programs pay close to the actual cost* of providing care -- a modest expectation, yet crucial for preserving rural access to hospital care.

Why CAH Designation for St. Mary's Hospital in Superior? St. Mary's provides vital emergency (over 10,000 ER visits in 2002), inpatient and outpatient care for Douglas County. St. Mary's also employs 130 FTEs, has an annual payroll of over \$7 million and purchases an equivalent amount in goods and services. However, in 2001 St. Mary's had a "profit" margin of **negative 12%**. In FY03, approximately 75% of St. Mary's patients were from Medicare, another 5% from Medicaid -- **four out of five St. Mary's patients are paying no more than 75% of actual cost**. It is increasingly difficult for a hospital with this type of patient base to exist as consumers and employers become less willing to have these costs automatically shifted to their side of the ledger. At this rate, St. Mary's will not remain open long, crucial health care services will end, and the area economy will be dealt a severe blow.

What is the Impact on St. Mary's? If designated a CAH, St. Mary's will be paid close to actual cost* by government programs. This means St. Mary's will receive an additional \$1.3 million annually from increased federal Medicare payments and \$285,200 (\$118,400 GPR) from Medicaid. These increases would be budget neutral for Wisconsin.

How Can This Proposal Increase Payments, Yet Be Budget Neutral? Through this amendment, Wisconsin will secure an additional \$1.3 million in federal Medicare funding, and \$167,000 in federal Medicaid dollars. The \$118,400 GPR (about .07% of the Medicaid GPR hospital budget) will come from *existing* Medicaid hospital funding.

Why Does This Require a Rule Change? Federal rules purposely give states tremendous flexibility to determine CAH eligibility. St. Mary's is located in an area not typically considered rural, although many of its patients come from rural areas to seek care. This rule change will allow St. Mary's, a hospital located in a combined urban/rural setting (Superior), to apply for CAH designation.

Will More Hospitals Follow? Not as a result of this proposal. Given the limited scope of the amendment, only St. Mary's in Superior will qualify. However, by utilizing the intended flexibility in federal regulations, Wisconsin could enable even more hospitals to receive CAH designation, obtain cost-based reimbursement, and capture a greater/fairer share of federal Medicare dollars -- ultimately benefiting Wisconsin's taxpayers. Hospitals that meet existing requirements may still apply for CAH designation regardless of this rule change.

* CAHs are paid Medicare-defined cost, which is still about 10% less than actual cost. So while they still lose money on every Medicare patient, they lose less.

WISCONSIN HOSPITAL ASSOCIATION, INC.

July 31, 2003



The Honorable Joseph Leibham
Co-Chair, Joint Committee for the Review of Administrative Rules
Wisconsin State Senate
State Capitol, 409 South
Madison, WI 53707

The Honorable Glenn Grothman
Co-Chair, Joint Committee for the Review of Administrative Rules
Wisconsin State Assembly
State Capitol, 15-North
Madison, WI 53707

RE: JCRAR Hearing Concerning HFS 124 Amendments for Critical Access Hospitals.

Dear Senator Leibham and Representative Grothman:

This letter is in response to the questions raised at the Joint Committee for the Review of Administrative Rules hearing on July 29, 2003. The amendments to HFS 124 proposed by DHFS would enable St. Mary's Hospital in Superior to be designated as a Critical Access Hospital ("CAH"). This designation is crucial for the hospital and the community it serves.

The State of Wisconsin, by taking advantage of flexibility in the federal regulations, can enable hospitals like St. Mary's to be designated CAHs. The proposed rule changes, however, are limited in scope and will expand the program to permit only St. Mary's Hospital in Superior to qualify as a CAH (in addition to the hospitals that qualify under the existing rules). Under the federal regulations, even if a hospital does not meet the criteria-based federal rural requirements, the federal government will recognize a hospital as a CAH if:

- (1.) The hospital is located in an area designated by state law or regulation as "rural area;" or
- (2.) The state, through state law or regulation, designates the hospital a "rural hospital" (see 42 CFR 412.103(a)(2));

In addition, the state rule would require St. Mary's to be designated as a "necessary provider of health care services" to residents in the area before being designated as a CAH.

The proposed changes to HFS 124 adds a definition of "rural hospital," to allow hospitals to meet that requirement in the federal regulations, and expands the definition of a "necessary provider of health care services" to include rural hospitals.

July 31, 2003
Page 2

Because Wisconsin has not taken advantage of the flexibility provided to states in the federal law, Wisconsin has lost access to additional federal Medicare dollars. It is important to note that Wisconsin ranks 49th in Medicare dollars received. Once designated as a critical access hospital, St. Mary's would receive \$1.3 million annually in additional Medicare payments from the federal government. Further, by amending the state regulation and providing the above designations, St. Mary's in Superior would receive additional Medicaid payments of \$285,200 AF (\$118,400 GPR) annually. It is important to note that this proposal is revenue neutral and will have no fiscal impact on the Medicaid program. Funding will be redistributed from within the more than \$400 million in Medicaid payments made to hospitals annually.

It is increasingly difficult for a hospital that has a patient base that is disproportionately uninsured or recipients of Medicare or Medicaid to exist. The costs to provide care through the under-funded government programs cannot be shifted to the insured patients. The situation in Superior has reached a point that without designation as a CAH, St. Mary's is likely to close. In addition to losing access to hospital services, which include over 10,000 emergency room visits a year, losing the hospital would mean a loss of over 200 jobs with an annual payroll of \$7 million.

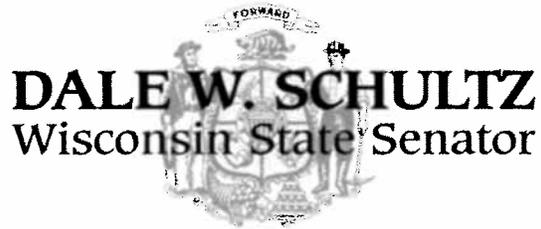
Given that CAH status would permit St. Mary's to continue providing critical hospital services in the Superior area, WHA requests that the Committee approve the extension of the emergency rules. I would appreciate your support of St. Mary's Hospital and its community on this important issue.

Sincerely,



Steve Brenton
President

c: JCRAR Members



AUG 07 2003

August 5, 2003

Senator Joe Leibham
Co-Chair, Joint Committee for the Review of Administrative Rules
409 South, State Capitol
P.O. Box 7882
Madison, WI 53707

Dear Senator Leibham,

I am writing to you regarding Emergency Rule HFS 124, which is currently before the Joint Committee for the Review of Administrative Rules. This rule would allow St. Mary's Hospital in Superior to be designated as a Critical Access Hospital (CAH).

I represent one of the most rural areas of the state, and I understand how crucial it is for small rural hospitals to be given this title. I have two critical access hospitals in my district and another that has applied for designation.

It is essential, especially in rural areas, to make sure that quality health care is accessible. Many rural hospitals have a larger population of Medicare and Medicaid patients than other areas of the state and also receive insufficient reimbursement for these patients. This puts tremendous pressure on already tight budgets.

The critical access hospital designation is one way in which to help rural health care provide both quality and efficient care in settings that best meet the needs of rural residents. St. Mary's Hospital is a necessary provider of health care services to area residents. If it were to close, the accessibility to acute care for residents of Douglas County would drastically decrease.

There are too many other dangers currently facing the health care industry. Let's not exacerbate the problem. I ask that you strongly consider extending Emergency Rule HFS 124 to help ensure that the health care needs of the residents of Douglas County are met. Thank you.

With kindest regards,

Dale W. Schultz
17th Senate District

cc: Senator Bob Jauch

WISCONSIN HOSPITAL ASSOCIATION, INC.

AUG 01 2003

July 31, 2003



The Honorable Joseph Leibham
Co-Chair, Joint Committee for the Review of Administrative Rules
Wisconsin State Senate
State Capitol, 409 South
Madison, WI 53707

The Honorable Glenn Grothman
Co-Chair, Joint Committee for the Review of Administrative Rules
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State Capitol, 15-North
Madison, WI 53707

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July 31, 2003
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Given that CAH status would permit St. Mary's to continue providing critical hospital services in the Superior area, WHA requests that the Committee approve the extension of the emergency rules. I would appreciate your support of St. Mary's Hospital and its community on this important issue.

Sincerely,



Steve Brenton
President

c: JCRAR Members

BOB JAUCH

WISCONSIN STATE SENATOR

Tuesday, August 05, 2003

Senator Joe Leibham
Room 409 South State Capitol
Madison, WI

Dear Senator Leibham,

I am contacting you as a member of the Joint Committee on Administrative Rules to request that you support extending the Emergency Rule related to the Critical Access Hospital Program. As you aware, the department created this emergency rule to address in part the extreme financial condition and potential closure of St. Mary's Hospital in Superior.

St. Mary's Hospital of Superior is a small but essential health care facility located in the City of Superior. Even though St. Mary's qualifies as a rural hospital, it cannot be designated as a Critical Access Hospital simply because it is located in a community with a population greater than 14,000.

When Congress created the Critical Access Hospital (CAH) Program, the purpose was to assist small rural hospitals in providing critical healthcare in rural areas. The Program has rescued many rural hospitals from financial difficulty and possible closure by improving Medicare reimbursement for hospitals that serve a disproportionate share of Medicare patients. It is crucial to the future viability of St. Mary's and to the well being of the residents of this region that Wisconsin's Rural Hospital Flexibility Program be modified to allow hospitals like St. Mary's to qualify as Critical Access Hospital.

St. Mary's provides vital health care services to residents of rural Douglas County and is, in fact, the primary care facility for rural Douglas County. I can personally speak to the importance of St. Mary's to the residents of these rural communities. Last year, when my son suffered a concussion and required care, I took him to St. Mary's from our community of Poplar, which is located 25 miles away. I know I am among the many rural Douglas County residents who seek care at St. Mary's because it is a quality health services provider but also because it is the only place to go.

Like so many rural hospitals across the State, the vast majority of patients served by St. Mary's are low-income families or elderly who are Medicaid or Medicare enrollees. This fact makes St. Mary's dependent on Medicare and Medicaid dollars for reimbursement and it faces a devastating financial burden because Medicare and Medicaid reimbursement does not fully pay cost of care.

However, St. Mary's Hospital is hit particularly hard because of its close proximity to Duluth, Minnesota. The metropolitan area of Duluth is classified as an urban MSA and this fact puts St. Mary's at a severe competitive disadvantage compared to the larger health care facilities in Duluth that benefit from a higher hospital wage index and thus a higher Medicare payment percentage. This situation hinders St. Mary's ability to recruit and retain physicians and staff and threatens their ability to meet the needs of rural Douglas County residents.

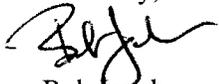
In addition to recognizing the impact of the Medicare reimbursement disparity on the financial stability of St. Mary's Hospital, it is essential to acknowledge that the City of Superior, despite its population, and Douglas County can clearly be classified as rural. The City and County unemployment rate is higher than the State average and the median household income is significantly below the state average. There is a high degree of underemployment and as a result, many persons living in the area are under- or uninsured. Finally, the area already has reduced access to health care because of geographic conditions, poorer roads and seasonal weather patterns.

Federal guidelines for the CAH Program allow States latitude in developing their designation plans so those plans can recognize the unique characteristics of the rural health care delivery system. Secretary Nelson recognized the unique set of circumstances that impact St. Mary's Hospital because it is situated in a rural county that borders an urban center. She and her staff utilized the CAH Program's flexibility and proposed expanding the state's authority to designate a hospital as a necessary provider of health care services and as a rural hospital. In doing so, St. Mary's could be designated a critical access hospital and we expect federal approval of the facility's application for Critical Access Hospital status.

I urge you to approve the department's request for extension of the Emergency Rule. By doing so you will allow the department the flexibility so critical to the success of the CAH program and the struggling hospitals it is designed to benefit. This Emergency Rule permits recognition of St. Mary's critical status to the residents of Douglas County and with enhanced reimbursement from Medicare, St. Mary's can strengthen itself and continue to provide vital health care service to rural Douglas County.

I am available to answer any questions you may have regarding this important matter. Thank you for consideration of this request.

Sincerely,



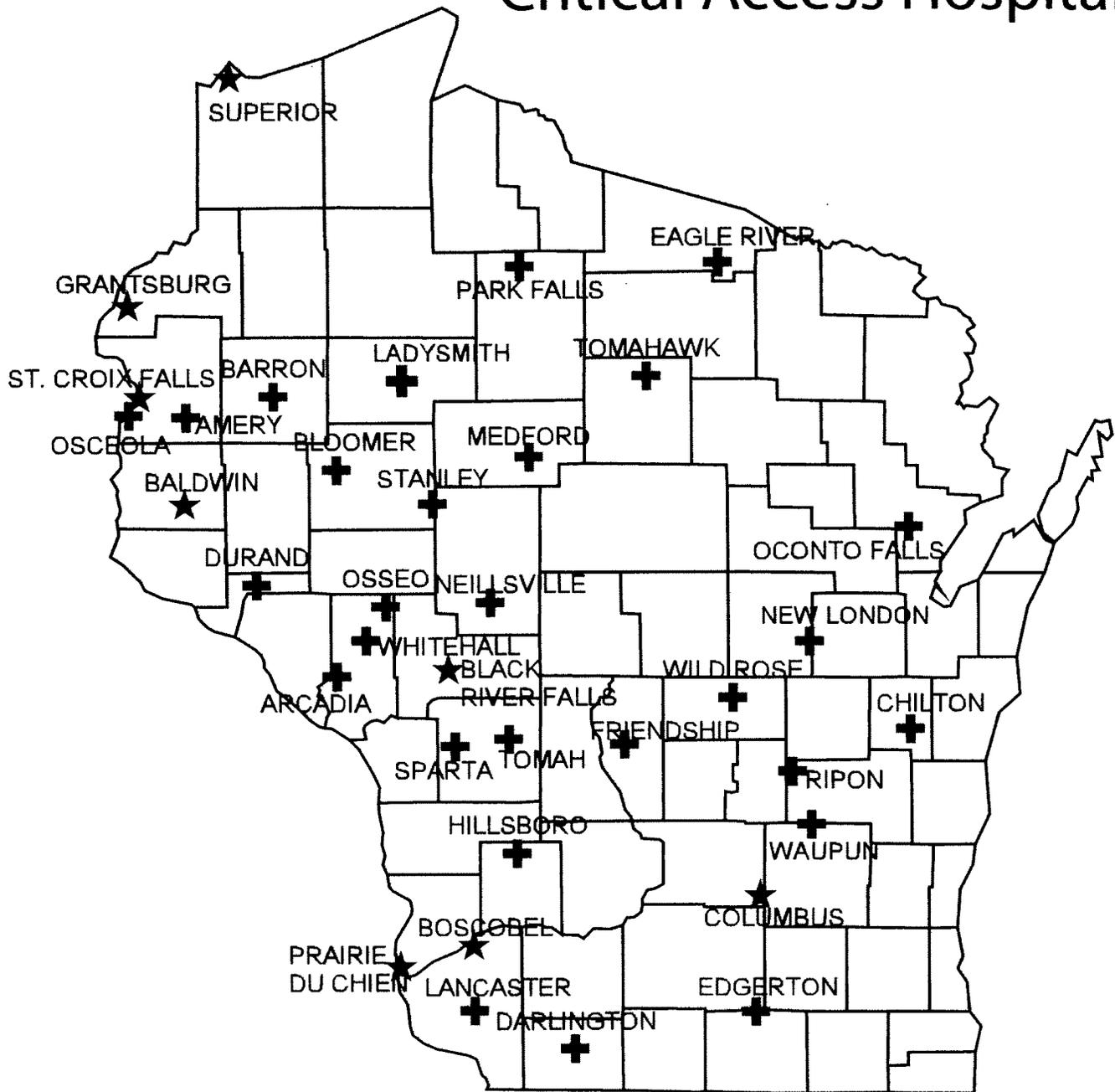
Bob Jauch
State Senator
25th Senate District

Status Report Wisconsin Critical Access Hospitals/ Applicants

Location	Hospital Name	Critical Access Effective Date	Area Type	Medicare Provider No	Wisconsin License No	Comments
28 New London	New London Family Medical Center**	1/1/2003	III	#52-1326	Lic. # 1029	
29 Ladysmith	Rusk County Memorial Hospital	3/1/2003	I	#52-1328	Lic. # 1030	Letter of intent 7/26/02 Area Application 5/23/03
30 Baldwin	Baldwin Area Medical Center		III			Letter of intent 12/16/02 Area application 3/25/03 Certification applic. 6/16/03
31 Prairie du Chien	Prairie du Chien Memorial Hospital		II			Letter of intent 12/24/02 Area application 1/06/03
32 Boscobel	Boscobel Area Health Center		II			Letter of intent 3/09/03
33 Columbus	Columbus Community Hospital					Area application 4/22/03 Certification applic. 6/26/03
34 Grantsburg	Burnett Medical Center		II			Letter of intent 3/25/03 Area Application 4/11/03
35 Superior	St. Mary's		III			Letter of intent 6/26/03 Area Application 7/17/03
36 Black River Falls	Black River Falls Memorial Hospital		II			Letter of intent 7/17/03
37 St. Croix Falls	St. Croix Regional Medical Center					Letter of intent 7/17/03

Distance from nearest Hospital: Type I - 35 miles, Type II - betw 20 & 34 miles, Type III - less than 20 r ** Hospitals in rural areas of urban counties
 Prepared by: Wisconsin Rural Hospital Flexibility Program Phone: (608)265-3608 or 1-800-385-0005
 Updated 5 August 2003

Wisconsin's Critical Access Hospitals



★ Applied for designation

+ Certified CAHs



August 2003

Map Prepared by the
Wisconsin Office of Rural Health