

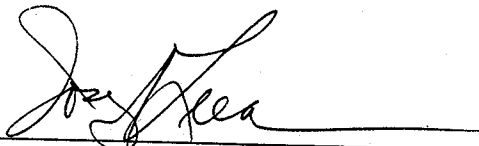
CERTIFICATE

STATE OF WISCONSIN)
DEPARTMENT OF HEALTH AND FAMILY SERVICES) SS)

I, Joseph Leean, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to critical access hospitals were duly approved and adopted by this Department on December 10, 1998.

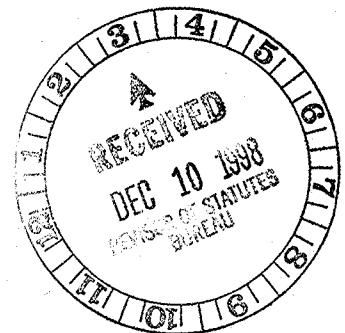
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

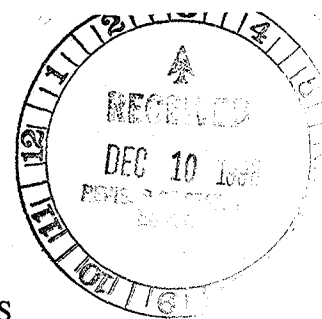
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 10th day of December, 1998.



Joseph Leean, Secretary
Department of Health and Family Services

SEAL:





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 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.

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~~ unrelated 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, 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 124.03(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.

SECTION 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.

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.

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 85.645. 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:

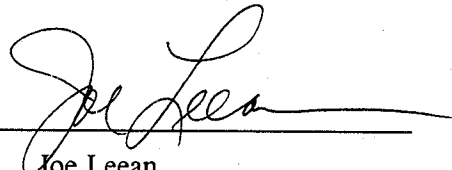
- (a) Transfer and referral of patients from the critical access hospital.
- (b) Development and use of communication systems.
- (c) Provision of emergency and non-emergency transportation.
- (d) Credentialing of professional staff and quality assurance.

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: December 10, 1998

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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MADISON WI 53707-7850

TELEPHONE: (608) 266-8428

December 15, 1998

Gary Poulson
Deputy Revisor of Statutes
Revisor of Statutes Bureau
131 W. Wilson, Suite 800
Madison, WI 53703

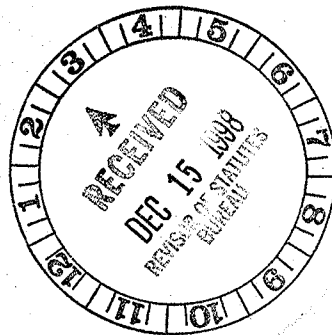
Dear Mr. Poulson:

Attached are corrected pages for the recently filed ss. HFS 124.02 and 124.37 to 124.41, relating to Critical Access Hospitals. The pages include two changes recommended by the Legislative Council—addition of “access” before “hospital” in the 3rd line of s. HFS 124.38 (2), and the addition of an omitted number in the CFR citation in s. HFS 124.39 (3) (b). Both changes were included in the copy of the proposed rules submitted to the Legislature for review.

Thank you for making these corrections in our filed copy.

Sincerely,

Paul E. Menge
Paul E. Menge
Administrative Rules Manager



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.

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(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.

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(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.

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(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.

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(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.