

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

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

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

  
Helene Nelson  
Secretary

Dated: March 20, 2003

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 <sup>th</sup> 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 Gitchinadj 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

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

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: \_\_\_\_\_

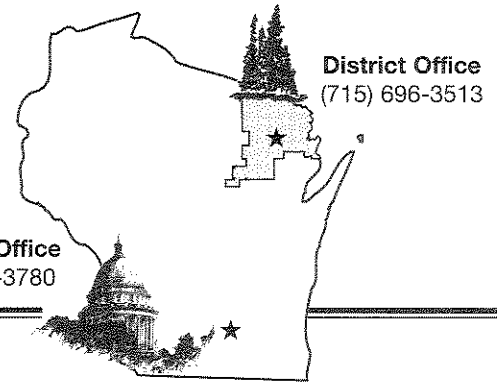
Helene Nelson  
Secretary

SEAL:

**LORRAINE M.  
SERATTI**  
STATE REPRESENTATIVE  
36<sup>TH</sup> ASSEMBLY DISTRICT

P.O. Box 8953, State Capitol • Madison, Wisconsin 53708-8953  
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**Madison Office**  
(608) 266-3780



**District Office**  
(715) 696-3513

March 14, 2003

Senator Joe Leibham  
409 South, State Capitol  
Madison, WI 53707

Dear Senator Leibham,

I am forwarding for your consideration recent articles from my local home newspaper regarding an ongoing dispute over regulation of the state's Wild Rivers. As you can see there is pressure being applied to the Florence County Board to maintain the restrictive zoning regulations created by the DNR as it relates to land use and development in the shore land areas of Wild Rivers. The land use issue will be decided locally, however I am concerned with a specific impediment caused by the Wild Rivers Act – primarily the impact on tourism recreation, particularly ATV and snowmobile enthusiasts.

In discussions with local county supervisors, there is one particular issue that confronts them that they have no control over - NR302, the DNR's Wild Rivers Administrative Code. Florence and Forest County officials have tried unsuccessfully to obtain approval to cross Wild Rivers with ATV's. DNR has stonewalled local officials for several years in their attempt to obtain approval for crossings. Florence County is particularly impacted because the Pine and the Popple rivers (both state-designated Wild Rivers) pose a barrier to accessing ATV trail systems connected to adjoining counties. This has also prevented ATV recreationists from entering Florence County and spending much-needed tourism dollars at area businesses. The result of this barrier by the DNR is that ATV recreationists are driving through Florence County into the Upper Peninsula of Michigan where ATV regulations are less stringent.

I believe this is an issue that cannot be ignored. Our budget deficit is such that we cannot allow the DNR to continue to thwart the collection of vital tourism revenue. Therefore, I am appealing to you as co-chairs to schedule a hearing on NR302 at your earliest convenience to address this problem. I thank you in advance for your consideration of my request.

Sincerely,

Lorraine M. Seratti  
State Representative  
36<sup>th</sup> Assembly District

cc: Rep. Grothman

March 20, 2003

The Honorable Joseph Leibham, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 409 South, State Capitol  
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 North, State Capitol  
Madison, Wisconsin

Dear Senator Leibham and Representative Grothman:

This is notification that tomorrow the Department will publish an emergency rulemaking order to amend subch. VI of ch. HFS 124, its rules for hospitals under s. 50.36 (1), Stats., to permit St. Mary's Hospital of Superior to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital. A copy of the emergency order is attached to this letter.

The amended rules are being published by emergency order on Friday, March 21, 2003 and will take effect on that day. The Department intends to immediately follow this emergency rule with a similar proposed permanent rulemaking order.

If you have any questions about this emergency rulemaking order, you may contact Cheryl Bell-Marek of the Division of Supportive Living at 608-264-9896.

Sincerely,

Larry Hartzke  
Administrative Rules Manager

Attachment

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:

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ORDER

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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:





State of Wisconsin  
**Department of Health and Family Services**

---

Jim Doyle, Governor  
Helene Nelson, Secretary

July 17, 2003

The Honorable Joseph Leibham, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 409 South, State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Dear Senator Leibham:

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.

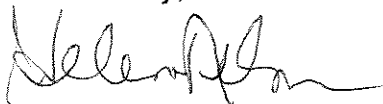
The emergency rulemaking order creating rules was published and effective on **March 21, 2003**, and **will expire on August 18, 2003**, unless extended. The Department held a hearing on the rules on June 20, 2003 in Superior. All of the comments the Department received were supportive of the rule. The 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.

**Wisconsin.gov**

Senator Leibham  
July 17, 2003  
Page 2

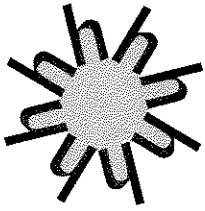
Sincerely,

A handwritten signature in black ink, appearing to read "Helene Nelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Helene Nelson  
Secretary

Attachments

cc Representative Grothman  
Senator Alan Lasee  
Speaker John Gard  
Gary Radloff



# Rural Wisconsin Health Cooperative

AUG 07 2003

August 4th, 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: HFS 124 Amendments For Critical Access Hospitals.

Dear Senator Leibham and Representative Grothman:

I am writing to support the amendments to HFS 124 proposed by the Department of Health & Family Services so that St. Mary's Hospital in Superior may be designated as a Critical Access Hospital ("CAH"). This designation is crucial for the larger area, not just Superior. I recently visited this part of the state and there is no doubt in my mind that the rural character and economic challenges of Douglas County are what the CAH program is intended to address.

The proposed rule change is limited in scope and will expand the program to permit only this hospital to qualify as a CAH (as well as others who currently qualify but who have not yet applied). This is a targeted solution to a unique problem. As you know, Wisconsin is near the bottom of average per beneficiary expenditures under the Medicare program—no one can accuse us of being overly aggressive in using federal law for our state's betterment.

If St. Mary's loses its ability to provide critical hospital services in the Superior area, it will be a loss for Wisconsin and more specifically our state's northwestern communities.

I hope you can help; thanks.

Sincerely,

Tim Size  
Executive Director



P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-2056

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

*Emergency Rule Extension Motion Form*

August 12, 2003  
411 South  
State Capitol

Moved by Brothman, Seconded by Welch

THAT, pursuant to s. 227.24(2)(a), stats. the Joint Committee for Review of Administrative Rules extends the effective period of emergency rules HFS 124 for 44 days at the request of the Department of Health and Family Services.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM	✓		
2. Senator WELCH	✓		
3. Senator LAZICH	✓		
4. Senator ROBSON	✓		
5. Senator LASSA	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative BLACK	✓		
10. Representative HEBL	✓		
Totals			

Motion Carried

Motion Failed

SENATOR JOSEPH LEIBHAM  
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-2056

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

August 14, 2003

The Honorable Alan Lasee  
Senate President  
State Capitol Building, Room 220 South  
Madison, WI 53702

The Honorable John Gard  
Assembly Speaker  
State Capitol Building, Room 211 West  
Madison, WI 53702

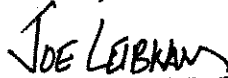
Dear President Lasee and Speaker Gard:


The Joint Committee for the Review of Administrative Rules met in Executive Session on August 12, 2003 and adopted the following motions:

**Emergency Rule HFS 124** Relating to critical access hospitals. Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends HFS 124 at the request of the Department of Health and Family Services by 44 days.  
Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,

  
Senator Joseph Leibham  
Senate Co-Chair

  
Representative Glenn Grothman  
Assembly Co-Chair

JKL:GSG:pvs

cc: Secretary of State Doug LaFollette  
Revisor of Statutes Gary Poulson



P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-2056

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

August 14, 2003

Helene Nelson, Secretary  
Department of Health and Family Services  
1 West Wilson Street, Ste. 650  
Madison, WI 53702

Dear Secretary Nelson:

The Joint Committee for the Review of Administrative Rules met in Executive Session on August 12, 2003 and adopted the following motion:

**Emergency Rule HFS 124** **Relating to critical access hospitals.** Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends HFS 124 at the request of the Department of Health and Family Services by 44 days.  
Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

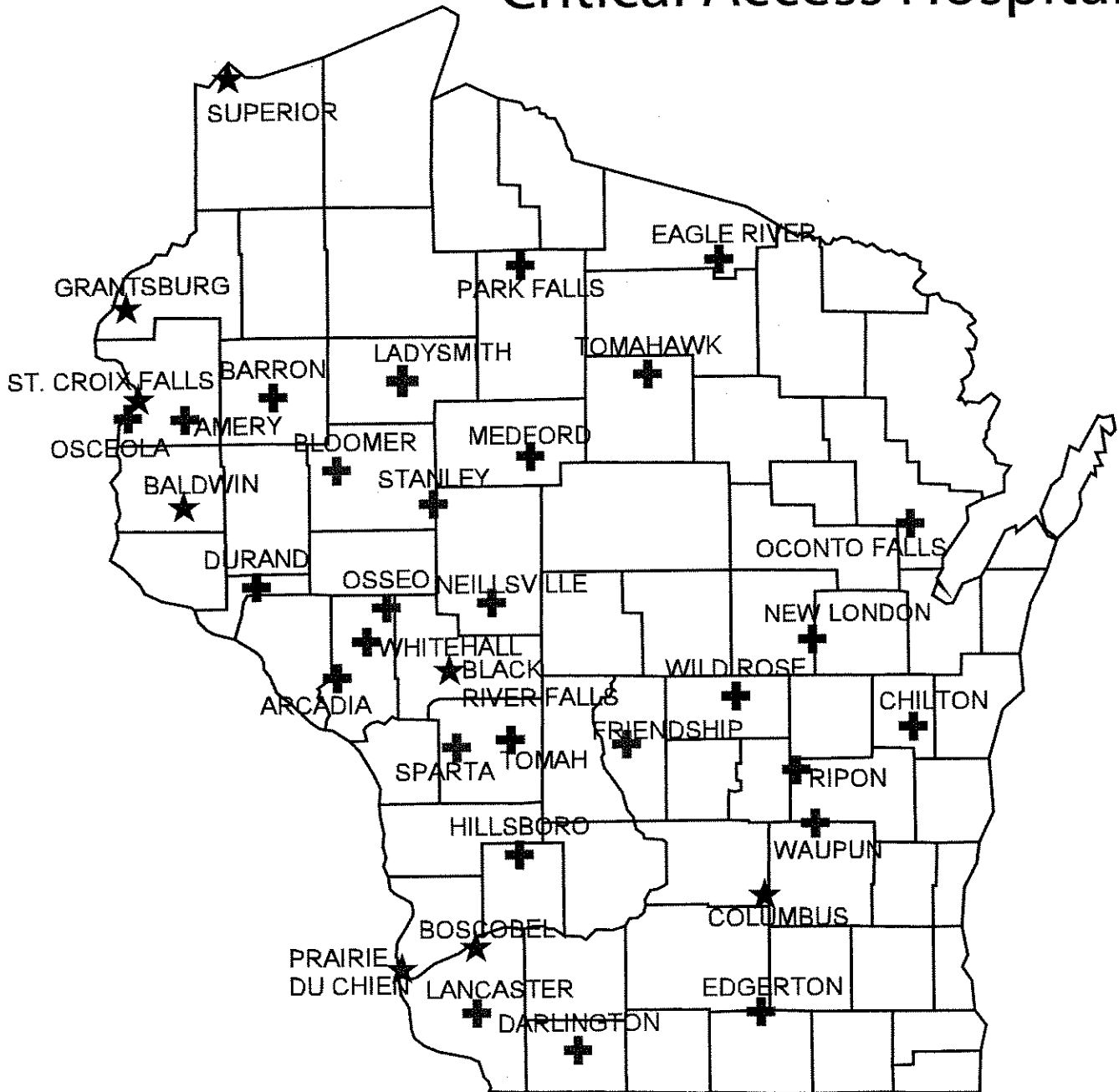
Senator Joseph Leibham  
Senate Co-Chair

Representative Glenn Grothman  
Assembly Co-Chair

JKL:GSG:pvs

cc: Secretary of State Doug LaFollette  
Revisor of Statutes Gary Poulson

# Wisconsin's Critical Access Hospitals



★ Applied for designation

+ Certified CAHs



August 2003  
Map Prepared by the  
Wisconsin Office of Rural Health

**Status Report  
Wisconsin Critical Access Hospitals/ Applicants**

Location	Hospital Name	Critical Access Effective Date	Area Type	Medicare Provider No	Wisconsin License No	Comments
1 Eagle River	Eagle River Memorial Hospital	10/1/1999	II	# 52-1300	Lic.# 1000	
2 Oconto	Oconto Memorial Hospital	12/1/1999	III	# 52-1301	Lic.# 1002	Closed June 30, 2003
3 Wild Rose	Wild Rose Memorial Community Hosp	12/1/1999	III	# 52-1303	Lic.# 1004	
4 Osseo	Osseo Area Hospital & Nursing Home	1/1/2000	II	# 52-1302	Lic.# 1003	
5 Hillsboro	St. Joseph's Community Health Serv	3/8/2000	II	# 52-1304	Lic.# 1005	
6 Sparta	Franciscan Skemp Healthcare	4/20/2000	II	# 52-1305	Lic.# 1009	
7 Arcadia	Franciscan Skemp Healthcare	5/1/2000	III	# 52-1306	Lic.# 1007	
8 Durand	Chippewa Valley Hospital	8/1/2000	II	# 52-1307	Lic.# 1008	
9 Amery	Amery Regional Medical Center	11/2/2000	II	# 52-1308	Lic.# 1010	
10 Oconto Falls	Community Memorial Hospital	2/1/2001	III	# 52-1310	Lic.# 1012	
11 Stanley	Victory Medical Center**	3/7/2001	II	# 52-1311	Lic.# 1013	
12 Darlington	Memorial Hospital of Lafayette County	4/1/2001	II	# 52-1312	Lic.# 1015	
13 Friendship	Adams County Memorial Hospital	4/1/2001	II	# 52-1309	Lic.# 1014	
14 Tomahawk	Sacred Heart Hospital	5/1/2001	II	# 52-1313	Lic.# 1016	
15 Bloomer	Bloomer Medical Center**	7/1/2001	III	# 52-1314	Lic.# 1017	
16 Barron	Barron Memorial Medical Center	9/1/2001	III	# 52-1315	Lic.# 1018	
17 Whitehall	Tri-County Memorial Hospital	9/23/2001	III	# 52-1316	Lic.# 1019	
18 Chilton	Calumet Medical Center**	11/2/2001	II	# 52-1317	Lic.# 1020	
19 Edgerton	Memorial Community Hospital**	1/1/2002	III	# 52-1319	Lic.# 1022	
20 Osceola	Osceola Medical Center	1/1/2002	III	# 52-1318	Lic.# 1021	
21 Ripon	Ripon Medical Center	4/1/2002	III	# 52-1321	Lic.# 1024	
22 Tomah	Tomah Memorial Hospital	4/1/2002	II	# 52-1320	Lic.# 1023	
23 Medford	Memorial Health Center Inc.	6/10/2002	I	# 52-1324	Lic.# 1027	
24 Lancaster	Grant Regional Health Center	6/21/2002	III	# 52-1322	Lic.# 1025	
25 Neillsville	Memorial Hospital, Inc.	8/1/2002	II	# 52-1323	Lic.# 1026	
26 Park Falls	Flambeau Medical Center	10/1/2002	I	# 52-1325	Lic.# 1028	
27 Waupun	Waupun Memorial Hospital	2/1/2003	III	# 52-1327	Lic.# 1031	