

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: August 15, 2003

By: \_\_\_\_\_  
Helene Nelson  
Secretary

SEAL: