

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 667. HOSPITAL STANDARDS**

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 63. Rural Emergency Hospitals [NEW]

310:667-63-1 [NEW]

310:667-63-2 [NEW]

310:667-63-3 [NEW]

310:667-63-4 [NEW]

310:667-63-5 [NEW]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

ADOPTION:

January 12, 2023

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Effective January 1, 2023, rural hospitals may seek the designation of a rural emergency hospital if the healthcare facility is licensed by the state in which it is located as a rural emergency hospital and the healthcare facility complies with federal statutes and regulations including specific rules implemented by the Centers for Medicare & Medicaid Services ("CMS"). The Oklahoma State Department of Health ("OSDH") cannot have permanent rules in effect to cover this category of licensure before 2024. Adopting these emergency rules will provide access to healthcare in rural areas that does not currently exist and help facilities in existence convert to this status to receive federal subsidies available to this category of hospital.

GIST/ANALYSIS:

The proposed rules create a new category of licensure for rural emergency hospitals ("REH"). The REHs must be rural and are required to meet state and CMS regulations. The requirements include: a 24-hour limit on individual patient care; a transfer agreement with a level I or level II trauma center; licensure by OSDH; a provider agreement; and the hospital must implement all of the CMS conditions of participation.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. SECTION 253(F):

SUBCHAPTER 63. RURAL EMERGENCY HOSPITALS

310:667-63-1. Purpose

This Subchapter 63 creates a category of licensure to enable certain rural Oklahoma hospitals to receive federal healthcare reimbursements from Medicare and Medicaid programs, as rural emergency hospitals, pursuant to the Social Security Act § 1861(kkk), Title 42 U.S.C. § 1395x and 42 CFR Parts 485 and 489, to enable them to continue providing services to the rural communities they serve.

310:667-63-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"CMS" means the Centers for Medicare & Medicaid Services, a part of the United States Department of Health and Human Services.

"Code of federal regulations" or "CFR" means the codification of the general and permanent rules published by the departments and agencies of the federal government.

"Conditions of participation" means certain CMS regulations setting minimum health and safety standards for healthcare organizations to meet to participate in federally funded healthcare programs, such as Medicare and Medicaid.

"Facility" means:

(A) was a critical access hospital; or

(B) was a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of Title 42 U.S.C.) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of Title 42 U.S.C.), or was a subsection (d) hospital (as so defined) with not more than 50 beds that was treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of Title 42 U.S.C. [Title 42 U.S.C. 1395x]

"Rural emergency hospital" or "REH" means a facility, as defined above, that:

(A) is enrolled under Title 42 U.S. C. §1395cc(j), which relates to the enrollment process for providers of services and suppliers, submits the additional information described in paragraph 1395x(kkk)(4)(A) of Title 42 U.S.C., related to providing an action plan, describing any outpatient services offered and the proposed use of the additional facility payment to REHs, for purposes of such enrollment, and makes the detailed transition plan described in clause (i) of such paragraph available to the public, in a form and manner determined appropriate by the U.S. Secretary of Health & Human Services ("Secretary");

(B) does not provide any acute care inpatient services, other than those described in paragraph Title 42 U. S. C. 1395x(kkk)(6)(A), related a skilled nursing facility to furnish post-hospital extended care services;

(C) has in effect a transfer agreement with a level I or level II trauma center;

(D) meets-

(i) licensure requirements as described in paragraph Title 42 U.S.C. 1395x(kkk)(5);

(ii) the requirements of a staffed emergency department as described in paragraph Title 42 U.S.C. 1395x(kkk)(1)(B);

(iii) such staff training and certification requirements as the Secretary may require;

(iv) conditions of participation applicable to-

(I) critical access hospitals, with respect to emergency services under section 485.618 of title 42, Code of Federal Regulations ("CFR") (or any successor regulation); and

(II) hospital emergency departments under this subchapter, as determined applicable by the Secretary; [Title 42 U.S.C. 1395x(kkk)] and

(E) means an entity that operates for the purpose of providing emergency department services, observation care, and other outpatient medical and health services specified by the Secretary in which the annual per patient average length of stay does not exceed 24 hours. [42 CFR Part 485, § 485.502]

"Rural emergency hospital services" means the following services furnished by a rural emergency hospital ...that do not exceed an annual per patient average of 24 hours in such rural emergency hospital:

(A)... Emergency department services and observation care; and

(B) ... At the election of the rural emergency hospital, with respect to services furnished on an outpatient basis, other medical and health services as specified by the Secretary through rulemaking. [Title 42 U.S.C. 1395x (kkk)(1)]

"Twenty-four hours" or "24 hours" means the time calculation for determining the length of stay of a patient receiving REH services, which begins with the registration, check-in or triage of the patient (whichever occurs first) and ends with the discharge of the patient from the REH. [42 CFR Part 485, §485.502]

"U.S.C." means the United States Code, a consolidation and codification by subject matter of the general and permanent laws of the United States.

310:667-63-3. Licensure

(a) No person or entity shall operate a facility as a rural emergency hospital without first obtaining a license from the Department. The applicant for licensure must:

(1) be within the definition of facility in OAC 310:667-63-2;

(2) include an action plan for initiating rural emergency hospital services, including a detailed transition plan that lists the specific services that the facility will retain, modify, add and discontinue; and

(3) a description of services that the facility intends to provide on an outpatient basis.

(b) The applicant for REH licensure is subject to the licensure requirements set forth in OAC 310:667-1-3. All applicants receiving REH licensure are subject to the regulatory requirements specific to the type of facility in OAC 310:667.

(c) A licensed general hospital or critical access hospital that applies for and receives licensure as a rural emergency hospital and elects to operate as a rural emergency hospital will retain its original license as a general hospital or critical access hospital. The original licensewill remain inactive while the REH license is in effect.

310:667-63-4. REH basic requirements

No person or entity shall be licensed as an REH, to provide rural emergency hospital services, unless:

(1) the facility meets the definition of a rural emergency hospital contained in OAC 310:667-63-2;

(2) the facility has in effect a provider agreement as defined in 42 CFR Part 489, §489.3; and

(3) the facility meets the CMS conditions of participation set forth in 42 CFR Part 485, §§ 485.508 through 485.641.

310:667-63-5. Minimum operational requirements

No facility shall operate as a REH unless:

(1) The facility satisfies the emergency department requirements for a critical access hospital set forth in OAC 310:667-39-14;

(2) The facility satisfies the emergency department requirements for a REH as promulgated by CMS;

(3) The facility provides rural emergency hospital services;

(4) The facility has in effect a transfer agreement with a level I or level II trauma center that meets the requirements of OAC 310:667-59, Classification of Hospital Emergency Services;

(5) The facility complies with state and federal law, CMS staffing requirements and all CMS conditions of participation;

(6) The facility may not have inpatient beds, except that such hospital may have a unit that is a distinct part of such hospital and that is licensed as a skilled nursing facility to provide post-hospital extended care services; and

(7) The facility may own and operate an entity that provides ambulance services.