

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 63. Rural Emergency Hospitals [NEW]

SUMMARY:

Subchapter 63: 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 Centers for Medicare & Medicaid Services ("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. Adopting these 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. Rural emergency hospitals will receive an annual operating subsidy and higher federal healthcare reimbursements from CMS.

AUTHORITY:

Commissioner of Health, Title 63 O.S. § 1-104; Title 63 O.S. § 1-705.

COMMENT PERIOD:

October 16, 2023 through the close of the Department's normal business hours, 5 PM, on November 17, 2023. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on November 17, 2023 submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on November 17, 2023 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is November 20, 2023 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through November 17, 2023, to the contact person identified below.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contact person identified below or via the agency website at www.ok.gov/health.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.ok.gov/health.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail AudreyT@health.ok.gov.

INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

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

1. **DESCRIPTION:**

Subchapter 63. Rural Emergency Hospitals [NEW]:

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 Centers for Medicare & Medicaid Services ("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.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

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 CMS. Adopting these 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. Rural emergency hospitals will receive an annual operating subsidy and higher federal healthcare reimbursements from CMS.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Oklahomans will benefit from the increased availability of emergency healthcare throughout the state.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

The Department is not increasing any fees. The adoption of these proposed rules will enable rural hospital facilities to convert to rural emergency hospital licensure because the higher than usual federal subsidies from CMS will help maintain ongoing operations of the facility.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

There are no costs associated with implementation.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and it will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

There is no known adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

There are no less costly means currently identified.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

Increasing the availability of emergency healthcare throughout Oklahoma should result in improved health outcomes.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

The Department believes that existing healthcare facilities may struggle or discontinue operations because they lack economic viability if the rules are not adopted and new facilities will not open because of a perceived, or real, lack of viability in a particular rural area

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on September 11, 2023.

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

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 license will 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.