

CHAPTER 56**(HB 323)**

AN ACT relating to critical access hospitals and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216.380 is amended to read as follows:

- (1) The licensure category of critical access hospital is hereby created for existing licensed acute-care hospitals which qualify under this section for that status.
- (2) It shall be unlawful to operate or maintain a critical access hospital without first obtaining a license from the Cabinet for Health Services. An acute-care hospital converting to a critical access hospital shall not require a certificate of need. A certificate of need shall not be required for services provided on a contractual basis in a critical access hospital. ***A certificate of need shall not be required for an existing critical access hospital to increase its acute-care bed capacity to twenty-five (25) beds.***
- (3) Except as provided in subsection (4) of this section, only a hospital licensed as a general acute-care hospital may be relicensed as a critical access hospital if:
 - (a) The hospital is located in a county in a rural area that is:
 1. Located more than a thirty-five (35) mile drive, or, where the terrain is mountainous or only secondary roads are available, located more than a fifteen (15) mile drive, from another ***acute-care*** hospital or ***critical access hospital***~~{other health facility}~~; or
 2. Certified by the secretary as a necessary provider of health care services to area residents;
 - (b) For the purposes of paragraph (a) of this subsection, a hospital shall be considered to be located in a rural area if the hospital is not in a county which is part of a standard metropolitan statistical area, the hospital is located in a rural census tract of a metropolitan statistical area as determined under the most recent modification of the Goldsmith Modification, or is designated by the state as a rural provider. The secretary shall designate a hospital as a rural provider if the hospital is not located in a county which has the largest county population of a standard metropolitan statistical area;
 - (c) Except as provided in paragraph (d) of this subsection, the hospital provides not more than ***twenty-five (25)***~~{fifteen (15)}~~ acute care inpatient beds for providing ***acute*** inpatient care for a period that does not exceed, as determined on an annual, average basis, ninety-six (96) hours;
 - (d) If the hospital is operating swing beds under which the hospital's inpatient hospital facilities are used for the provision of extended care services, the hospital may be designated as a critical access hospital so long as the total number of beds that may be used at any time for furnishing of either extended care services or acute inpatient services does not exceed twenty-five (25) beds ~~{and the number of beds used at any time for acute inpatient services does not exceed fifteen (15) beds}~~. For the purposes of this section, any bed of a unit of the hospital that is licensed as a nursing facility at the time the hospital applies to the state for designation as a critical care access hospital shall not be counted.

- (4) The secretary for health services may designate a facility as a critical access hospital if the facility:
 - (a) Was a hospital that ceased operations on or after ten (10) years prior to April 21, 2000; or
 - (b) Was a hospital that was converted to a licensed primary care center, rural health clinic, ambulatory health center, or other type of licensed health clinic or health center and, as of the effective date of that conversion, meets the criteria for licensure as a critical access hospital under this subsection or subsection (3) of this section.
- (5) A critical access hospital shall provide the following services:
 - (a) Twenty-four (24) hour emergency-room care that the secretary determines is necessary for insuring access to emergency care services in each area served by a critical access hospital; and
 - (b) Basic laboratory, radiologic, pharmacy, and dietary services. These services may be provided on a part-time, off-site contractual basis.
- (6) A critical access hospital may provide the following services:
 - (a) Swing beds or a distinct unit of the hospital which is a nursing facility in accordance with KRS Chapter 216B and subject to approval under certificate of need;
 - (b) Surgery;
 - (c) Normal obstetrics;
 - (d) Primary care;
 - (e) Adult day health care;
 - (f) Respite care;
 - (g) Rehabilitative and therapeutic services including, but not limited to, physical therapy, respiratory therapy, occupational therapy, speech pathology, and audiology, which may be provided on an off-site contractual basis;
 - (h) Ambulatory care;
 - (i) Home health services which may be established upon obtaining a certificate of need; and
 - (j) Mobile diagnostic services with equipment not exceeding the major medical equipment cost threshold pursuant to KRS Chapter 216B and for which there are no review criteria in the State Health Plan.
- (7) ***In addition to the services that may be provided under subsection (6) of this section, a critical access hospital may establish the following units in accordance with applicable Medicare regulations and subject to certificate of need approval:***
 - (a) ***A psychiatric unit that is a distinct part of the hospital, with a maximum of ten (10) beds; and***
 - (b) ***A rehabilitation unit that is a distinct part of the hospital, with a maximum of ten (10) beds notwithstanding any other bed limit contained in law or regulation.***
- (8) ***Psychiatric unit and rehabilitation unit beds operated under subsection (7) of this section shall not be counted in determining the number of beds or the average length of stay of a***

critical access hospital for purposes of applying the bed and average length of stay limitations under paragraph (c) of subsection (3) of this section.

- (9) The following staffing plan shall apply to a critical access hospital:
- (a) The hospital shall meet staffing requirements as would apply under section 1861(e) of Title XVIII of the Federal Social Security Act to a hospital located in a rural area except that:
 - 1. The hospital need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the hospital shall be open and fully staffed, except insofar as the facility is required to make available emergency services and nursing services available on a twenty-four (24) hour basis; and
 - 2. The hospital need not otherwise staff the facility except when an inpatient is present; and
 - (b) Physician assistants and nurse practitioners may provide inpatient care within the limits of their statutory scope of practice and with oversight by a physician who is not required to be on-site at the hospital.
- ~~(10)(8)~~ A critical access hospital shall have a quality assessment and performance improvement program and procedures for review of utilization of services.
- ~~(11)(9)~~ A critical access hospital shall have written contracts assuring the following linkages:
- (a) Secondary and tertiary hospital referral services which shall provide for the transfer of a patient to the appropriate level of care and the transfer of patients to the critical access hospital for recuperative care;
 - (b) Ambulance services;
 - (c) Home health services; and
 - (d) Nursing facility services if not provided on-site.
- ~~(12)(10)~~ If the critical access hospital is part of a rural health network, the hospital shall have the following:
- (a) An agreement for patient referral and transfer, development, and use of communications systems including telemetry and electronic sharing of patient data, and emergency and nonemergency transportation; and
 - (b) An agreement for credentialing and quality assurance with a network hospital, peer review organization, or other appropriate and qualified entity identified in the state rural health plan.
- ~~(13)(11)~~ The Cabinet for Health Services and any insurer or managed care program for Medicaid recipients that contracts with the Department for Medicaid Services for the receipt of Federal Social Security Act Title XIX funds shall provide for reimbursement of services provided to Medicaid recipients in a critical access hospital at rates that are at least equal to those established by the Federal Health Care Financing Administration for Medicare reimbursement to a critical access hospital.
- ~~(14)(12)~~ The Cabinet for Health Services shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section.

Section 2. Beginning on the effective date of Section 1 of this Act through June 30, 2006, no acute care hospital shall convert to a critical access hospital unless the hospital has either a feasibility study funded through the Kentucky State Office of Rural Health or has filed a written request by February 1, 2004 with the Kentucky State Office of Rural Health requesting funding for a feasibility study to be conducted.

Section 3. Whereas the Center for Medicare and Medicaid Services implemented a new federal law that, effective January 1, 2004, would allow critical access hospitals to increase their number of acute care beds up to 25 and to operate a separate psychiatric or rehabilitation unit, and further delay in implementing these changes in Kentucky would prevent Kentucky's critical access hospitals from being able to treat additional patients in need of hospital care during the influenza season when more people require treatment, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 2, 2004