

TITLE 7 HEALTH
CHAPTER 7 HOSPITALS
PART 3 REQUIREMENTS FOR RURAL EMERGENCY HOSPITALS

7.7.3.1 ISSUING AGENCY: Division of Health Improvement, Department of Health.
[7.7.3.1 NMAC - N/E, 06/16/2023]

7.7.3.2 SCOPE: These requirements apply to private and public hospitals that as of December 27, 2020 was designated as a critical access hospital (CAH) by the centers for medicare and medicaid services (CMS), or was licensed as a hospital with not more than 50 licensed beds and located in a county in a rural area as defined in Section 1886(d)(2)(D) or Section 1886 (d)(8)(E) of the federal social security act, and provides rural emergency hospital (REH) services in the facility 24 hours per day seven days a week by a physician, nurse practitioner, clinical nurse specialist or physician assistant with a transfer agreement in effect with a level I or II trauma center, which does not have an annual average patient length of stay over 24 hours and satisfies all CMS requirements for reimbursement as a rural emergency hospital (REH). Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020 and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in medicare and meet all the conditions of participation (COP) and requirements for REH.
[7.7.3.2 NMAC - N/E, 06/16/2023]

7.7.3.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978, Subsection D of Section 24-1-2, Subsection J of Sections 24-1-3 NMSA, 24-1-5 NMSA of the Public Health Act as amended, and S.B. 245, 56th Leg., 1st Sess. (N.M.2023), <http://nmlegis.gov/Sessions/23%20Regular/final/SB0245.pdf>.
[7.7.3.3 NMAC - N/E, 06/16/2023]

7.7.3.4 DURATION: Permanent.
[7.7.3.4 NMAC - N/E, 06/16/2023]

7.7.3.5 EFFECTIVE DATE: June 16, 2023, unless a later date is cited at the end of a section.
[7.7.3.5 NMAC - N/E, 06/16/2023]

7.7.3.6 OBJECTIVE: Establish standards for licensing REHs in order to ensure the provision of emergency department services, observation care, and additional outpatient medical and health services, if elected by the REH, that promote equity in health care for those living in rural communities by facilitating access to needed services.
[7.7.3.6 NMAC - N/E, 06/16/2023]

7.7.3.7 DEFINITIONS:

A. Definitions beginning with “A”:

(1) **“Action Plan”** means the eligible facility’s plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH, submitted to the department for recommended approval or denial pursuant to CMS COPs.

(2) **“Amended license”** means a change of administrator, name, location, capacity, classification of any units as listed in these requirements requires a new license:

- (a) the application shall be on a form provided by the licensing authority;
- (b) the application shall be accompanied by the required fee for an amended license;

and

- (c) the application shall be submitted at least 10 working days prior to the change.

(3) **“Annual license”** means a license issued for a one-year period to a hospital that has met all license prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

B. Definitions beginning with “B”: [RESERVED]

C. Definitions beginning with “C”: “**Critical access hospital**” means a hospital with special characteristics, duly certified as such by centers for medicare and medicaid services (CMS) and is in compliance with the conditions of participation for such facilities; such critical access hospitals are deemed as meeting the intent of these requirements and may be licensed accordingly by the licensing authority.

D. Definitions beginning with “D”: “**Department**” means the New Mexico department of health.

E. Definitions beginning with “E”: [RESERVED]

F. Definitions beginning with “F”:

(1) “**Facility**” means:

(a) was a critical access hospital; or

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

(2) “**Financial interest**” means any equity, security, lease or debt interest in the hospital; financial interest also includes any equity, security, and lease or debt interest in any real property used by the hospital or in any entity that receives compensation arising from the use real property by the hospital.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: “**Hospital**” means a facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term “hospital” for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury, surgery, and obstetrics; any limited services hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.

I. Definitions beginning with “I”: [RESERVED]

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) “**Licensee**” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospital and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

(2) “**Licensing authority**” means the agency within the department vested with the authority to enforce these requirements.

M. Definitions beginning with “M”: [RESERVED]

N. Definitions beginning with “N”: [RESERVED]

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”: [RESERVED]

Q. Definitions beginning with “Q”: [RESERVED]

R. Definitions beginning with “R”:

(1) “**Rural emergency hospital**” or “**REH**” means a facility, as defined above, that:

(a) is enrolled under as defined in 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 as defined in 42 U.S.C. 1395x(kkk)(4)(A) 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 as defined in 42 U. S. C. 1395x(kkk)(6)(A), related to 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 42 U.S.C. 1395x(kkk)(5);

(ii) the requirements of a staffed emergency department as described in 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 critical access hospitals, with respect to emergency services under section as defined in 42 CFR 485.618 (or any successor regulation) and hospital emergency departments under this subchapter, as determined applicable by the secretary; as defined in 42 U.S.C. 1395x(kkk).

(e) is 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.

(2) **"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. 42 U.S.C. 1395x (kkk)(1).

S. **Definitions beginning with "S": "Secretary"** means the secretary of the New Mexico department of health.

T. **Definitions beginning with "T": [RESERVED]**

U. **Definitions beginning with "U": [RESERVED]**

V. **Definitions beginning with "V": "Variance"** means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a hospital and is at the sole discretion of the licensing authority.

W. **Definitions beginning with "W": "Waive/waiver"** means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time where the granting of a waiver will not create a danger to the health, safety, or welfare of patients or staff of a facility, and is at the sole discretion of the licensing authority.

X. **Definitions beginning with "X": [RESERVED]**

Y. **Definitions beginning with "Y": [RESERVED]**

Z. **Definitions beginning with "Z": [RESERVED]**

[7.7.3.7 NMAC - N/E, 06/16/2023]

7.7.3.8 GENERAL REQUIREMENTS:

A. **Eligibility:** The following facilities that were enrolled and certified to participate in Medicare as of December 27, 2020 are eligible to be an REH:

(1) CAHs;

(2) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (the Act) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D) of the Act) (referred to as rural hospital);

(3) 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 1886(d)(8)(E) of the Act (referred to as rural hospital);

(4) Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020 and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in Medicare and meet all the COPs and requirements for REHs.

B. **Action plan:** An action plan must be submitted to the department by the applicant facility to initiate REH services. The action plan outlines the facility's plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH. This should include details regarding staffing provisions and the number and type of qualified staff for the provision of REH services, as set forth in the CMS COPs.

(1) The action plan must include a detailed transition plan that lists the following:

(a) specific services the facility will retain;

(b) specific services the facility will modify;

(c) specific services the facility will add; and

(d) specific services the facility will discontinue.

(2) The facility must include a description of services that the facility intends to furnish on an outpatient basis if elected by the REH.

(3) The facility must also include information regarding how the facility intends to use the additional facility payment. This includes a description of the services that the additional facility payment would be

supporting such as the operation and maintenance of the facility and furnishing of services (i.e., telehealth services, ambulance services etc.).

(4) Eligible facilities may submit the action plan and additional information on letterhead or use the model template available on the CMS website. The submission should be signed by the facility's legal representative/administrator.

(5) The department will forward the action plan and information along with its recommendation for approval or denial to the designated CMS location for review and approval of the action plan components. The CMS location will make a final determination and notify the MAC once the enrollment package is complete and has been reviewed and approved.

(6) The action plan and information must include all the required elements as specified in Paragraph (1)-(3) of Subsection B of Section 7.7.3.9 NMAC. Missing or incomplete information may delay the conversion and enrollment process for eligible facilities applying to become an REH.

(7) In accordance with section 1861(kkk)(2)(A) of the Act, action plans will be available to the public and will eventually be posted on the CMS website.

C. Transfer Agreement: Pursuant to section 1861(kkk)(2) of the Act and 42 CFR § 485.538 Condition of Participation: Agreements, the REH is required to have a transfer agreement with at least one medicare-certified hospital that is designated as a level I or level II trauma center. The agreement is intended to ensure an appropriate referral and transfer process is in place for patients requiring emergency care and continued care services beyond the capabilities of the REH. In order to document compliance, a copy of the transfer agreement should be submitted to the department along with the action plan.

D. Attestation:

(1) An REH is required to meet the COPs for Rural Emergency Hospitals set forth at Subpart E of 42 CFR Part 485 (§ 485.500 - § 485.546). Other than the requirement that the REH submit its agreement with a nearby trauma center, eligible facilities converting to an REH may self-attest to meeting the REH COPs and will not require an automatic on-site initial survey as eligible facilities are expected to be in full compliance with the existing CAH and hospital requirements at the time of the request for conversion.

(2) Facilities may submit the attestation for compliance with the REH COPs along with the action plan and copy of the transfer agreement to the SA. The attestation may be completed on facility letterhead or the model template provided on the CMS website may be used. The attestation should be signed by the facility's legal representative or administrator.

(3) The department will review the additional information for completeness and confirm compliance with any applicable state licensure requirements. Once complete, the department will forward the additional information to the CMS location, along with a recommendation for certification or denial.

(4) The CMS location is responsible for making the final determination for certification of the REH. The effective date will be based upon the date the application package was determined to be complete and approved by the CMS location for meeting all REH requirements. For facilities that require an on-site initial survey, the effective date will be based on current CMS policy, which is the exit day of survey if no deficiencies are cited, or in the alternative, if deficiencies are noted, the date an acceptable plan of correction was approved (see 42 CFR §489.13).

E. Types of licenses:

(1) **"Annual license"**: an annual license is issued for a one-year period to a hospital that has met all requirements of these requirements.

(2) **"Temporary license"**: the licensing authority may, at its sole discretion, issue a temporary license prior to the initial state survey, or when the licensing authority finds partial compliance with these requirements. Facilities that were eligible as of December 27, 2020, which subsequently closed and re-enrolled in Medicare would require an initial on-site survey by the department. These facilities do not have to submit an attestation, as required in Subsection D of 7.7.3.9 NMAC, as an on-site initial survey will be performed to determine the facility is operational and in compliance with the REH requirements.

(a) a temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies;

(b) in accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

(3) **"Amended license"**: a licensee must apply to the licensing authority for an amended license when there is any change of administrator, name, location, capacity, classification of any unit as listed in these requirements:

(a) the application must be on a form provided by the licensing authority;

and (b) application must be accompanied by the required fee for an amended license;

(c) application must be submitted at least 30 calendar days prior to the change.
[7.7.3.8 NMAC - N/E, 06/16/2023]

7.7.3.9 LICENSE RENEWAL:

A. The licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee prior to the expiration of the current license.

B. Upon receipt of the renewal application and the required fee prior to expiration of current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these requirements.

[7.7.3.9 NMAC - N/E, 06/16/2023]

7.7.3.10 POSTING: The license, or a copy thereof, shall be conspicuously posted in a location accessible to public view within the hospital.

[7.7.3.10 NMAC - N/E, 06/16/2023]

7.7.3.11 NON-TRANSFERABLE REGISTRATION OF LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

- A. ownership of the hospital changes;
- B. the facility changes location;
- C. the licensee of the hospital changes; or
- D. the hospital discontinues operation.

[7.7.3.11 NMAC - N/E, 06/16/2023]

7.7.3.12 EXPIRATION OF LICENSE: A license will expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked, or:

- A. on the day a facility discontinues operation; or
- B. on the day a facility is sold, leased, otherwise changes ownership or licensee; or
- C. on the day a facility changes location.

[7.7.2.12 NMAC - N/E, 06/16/2023]

7.7.3.13 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if the licensing authority determines immediate action is required to protect human health and safety, the licensing authority may suspend a license. A hearing must be held in accordance with the regulations governing adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.

[7.7.2.13 NMAC - N/E, 06/16/2023]

7.7.3.14 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

A. A license may be denied, revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing for any of the following reasons:

- (1) failure to comply with any provisions of these requirements;
- (2) failure to allow survey by authorized representatives of the licensing authority;
- (3) permitting any person while active in the operation of a facility licensed pursuant to these requirements to be impaired by the use of prescribed or non-prescribed drugs, including alcohol;
- (4) misrepresentation or falsification of any information provided to the licensing authority;
- (5) the discovery of repeat violations of these requirements during surveys; or
- (6) the failure to provide the required care and services as outlined by these requirements.

B. for the purposes of calculating civil monetary penalties, penalty rates will be applied as set forth in Subparagraph (d) of Paragraph (3) of Subsection B of 7.1.8.16 NMAC.

[7.7.3.14 NMAC - N/E, 06/16/2023]

7.7.3.15 HEARING PROCEDURES:

- A. An applicant or licensee subject to an adverse action may request an administrative appeal.
 - B. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the hospital as outlined in Section 14 and 15 above will be held in accordance with adjudicatory hearings, New Mexico department of health, 7.1.2. NMAC.
 - C. A copy of the adjudicatory hearing procedures will be furnished to the hospital at the time an adverse action is taken against the licensee by the licensing authority. A copy may be requested at any time by contacting the licensing authority.
- [7.7.2.15 NMAC - N/E, 06/16/2023]

7.7.3.16 WAIVERS AND VARIANCES:

- A. Applications: All applications for the grant of a waiver or variance shall be made in writing to the licensing authority, specifying the following:
 - (1) the rule, regulation, or code from which the waiver or variance is requested;
 - (2) the time period for which the waiver or variance is requested;
 - (3) if the request is for a variance, the specific alternative action which the facility proposes;
 - (4) the reasons for request; and
 - (5) an explanation of why the health, safety, and welfare of the residents or staff are not endangered by the condition.
 - B. Requests for a waiver or variance may be made at any time.
 - C. The licensing authority may require additional information from the hospital prior to acting on the request.
 - (1) Grants and denials. The licensing authority shall grant or deny each request for waiver or variance in writing.
 - (a) Notice of a denial shall contain the reasons for denial.
 - (b) The decisions to grant, modify, or deny a request for a waiver or variance is subject to appeal one time only.
 - (2) The terms of a requested waiver or variance may be modified upon agreement between the licensing authority and the hospital.
 - D. The licensing authority may impose whatever conditions on the granting of a waiver or variance it considers necessary.
 - E. The licensing authority may limit the duration of any waiver.
- [7.7.3.16 NMAC - N/E, 06/16/2023]

7.7.3.17 COMPLIANCE WITH EXISTING REQUIREMENTS: An REH shall comply with the following:

- A. 42 CFR Part 485, Subpart E (relating to conditions of participation: Rural Emergency Hospitals (REHs));
 - B. In addition to the conditions of participation at 42 CFR Part 485, Subpart E, the hospital shall comply with 7.7.2 NMAC to the extent it does not conflict with the conditions of participation.
- [7.7.3.17 NMAC - N/E, 06/16/2023]

7.7.3.18 INCORPORATED AND RELATED CODES: The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes but not limited to the following:

- A. Health facility licensure fees and procedures, department of health, 7.1.7 NMAC.
 - B. Health facility sanctions and civil monetary penalties, department of health, 7.1.8 NMAC.
 - C. Adjudicatory hearings for licensed facilities, department of health, 7.1.2 NMAC.
 - D. Caregiver's criminal history screening requirements, 7.1.9 NMAC.
 - E. Employee abuse registry, 7.1.12 NMAC.
 - F. Incident reporting, intake processing and training requirements, 7.1.13 NMAC.
 - G. New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.
- [7.7.3.18 NMAC - N/E, 6/16/2023]

NMAC History: [RESERVED]