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Chapter 449@ Medical and Other Related Facilities

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Section 449.321@ Requirement to be primarily engaged in providing certain services; determination of whether requirement is met; exemption for certain hospitals

## **449.321 Requirement to be primarily engaged in providing certain services; determination of whether requirement is met; exemption for certain hospitals**

### **1.**

A hospital must be primarily engaged in providing the services described in 42 U.S.C. § 1395x(e)(1) to inpatients, unless the hospital:(a) Is a psychiatric hospital or rural hospital; (b) Has been certified as a critical access hospital by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 1395i-4(e); or (c) Contains a distinct part skilled nursing facility or nursing facility, as defined in 42 C.F.R. § 483.5.

#### **(a)**

Is a psychiatric hospital or rural hospital;

#### **(b)**

Has been certified as a critical access hospital by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 1395i-4(e); or

#### **(c)**

Contains a distinct part skilled nursing facility or nursing facility, as defined in 42 C.F.R. § 483.5.

### **2.**

Except as otherwise provided in subsections 3 and 4, the Division shall determine whether a hospital meets the requirements of subsection 1 based on a totality of

the circumstances.

**3.**

Except as otherwise provided in subsection 4, the Division shall deem a hospital to be in compliance with subsection 1 if the hospital: (a) Has 20 or fewer inpatient beds; (b) Has been licensed and operating for less than 12 months; and (c) Contains a number of inpatient beds that is equal to or greater than the capacity for patients in the emergency room at the hospital.

**(a)**

Has 20 or fewer inpatient beds;

**(b)**

Has been licensed and operating for less than 12 months; and

**(c)**

Contains a number of inpatient beds that is equal to or greater than the capacity for patients in the emergency room at the hospital.

**4.**

The provisions of subsection 3 do not apply to a hospital that was initially licensed on or before December 19, 2018, and has been licensed continually after that date.

**5.**

The Division shall determine that a hospital does not meet the requirements of subsection 1 if the hospital did not maintain:(a) A minimum average daily census of at least two inpatients, as determined pursuant to subsection 6; and (b) An average length of stay of at least 2 days during the 12 months immediately preceding the date on which the Division evaluates the hospital, as determined pursuant to subsection 6.

**(a)**

A minimum average daily census of at least two inpatients, as determined pursuant to

subsection 6; and

**(b)**

An average length of stay of at least 2 days during the 12 months immediately preceding the date on which the Division evaluates the hospital, as determined pursuant to subsection 6.

**6.**

For the purposes of this section: (a) Average daily census must be calculated by dividing the sum for the evaluation period of the number of inpatients in the hospital at midnight of each day of the evaluation period by the number of days in the evaluation period. (b) Average length of stay must be calculated by dividing the total number of inpatient hospital days in an evaluation period by the number of discharges from the hospital in the evaluation period. As used in this paragraph, "inpatient hospital day" means: (1) The day on which a patient is admitted to a hospital; (2) The day on which a patient is discharged from a hospital, including, without limitation, the day on which a patient dies; and (3) Each day after the day on which a patient is admitted to a hospital and before the patient is discharged.

**(a)**

Average daily census must be calculated by dividing the sum for the evaluation period of the number of inpatients in the hospital at midnight of each day of the evaluation period by the number of days in the evaluation period.

**(b)**

Average length of stay must be calculated by dividing the total number of inpatient hospital days in an evaluation period by the number of discharges from the hospital in the evaluation period. As used in this paragraph, "inpatient hospital day" means: (1) The day on which a patient is admitted to a hospital; (2) The day on which a patient is discharged from a hospital, including, without limitation, the day on which a patient dies;

and (3) Each day after the day on which a patient is admitted to a hospital and before the patient is discharged.

**(1)**

The day on which a patient is admitted to a hospital;

**(2)**

The day on which a patient is discharged from a hospital, including, without limitation, the day on which a patient dies; and

**(3)**

Each day after the day on which a patient is admitted to a hospital and before the patient is discharged.