Kansas Administrative Regulations
Economic Impact Statement (EIS)

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Agency	Agency Contact	Contact Phone Number

28-34-145, 28-34-146, 28-34-147, 28-34-148, 28-34-149, 28-34-150, 28-34-151, 28-34-152 -- new
K.A.R. Number(s)

☐ Permanent ☒ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed $1.0 million over any two-year period through June 30, 2024, or exceed $3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

- ☒ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☐ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

DOB APPROVAL STAMP (If Required)

Section I

Brief description of the proposed rule(s) and regulation(s).

K.A.R. 28-34-145 through K.A.R. 28-34-152 set forth the Rural Emergency Hospital (REH) licensure requirements pursuant to K.S.A. 65-481 *et seq.* The state licensure of REHs will allow eligible facilities to obtain federal designation as a REH through the Centers of Medicare and Medicaid Services (CMS).

At the federal level, REH is a designation given to eligible rural hospitals by CMS beginning January 1, 2023. Congress established the REH designation in December 2020 in Section 125 of the Consolidated Appropriations Act, 2021 (Public Law 116-260) and in response to the loss of essential healthcare services in rural areas due to hospital closures. In response to the federal law and in recognition of the importance of providing healthcare services in rural areas of the State, the Kansas Legislature passed the Rural Emergency Hospital Act in May of 2021. To obtain state licensure, a facility will have to meet eligibility requirements as set forth in statute and regulations. To obtain federal designation, an eligible facility must be licensed as a REH at a state level and meet the conditions of participation promulgated by CMS.

The proposed regulations outline the licensing procedure, application process, terms of the license, construction standards, and requirements that REH facilities abide by the conditions of participation promulgated by CMS and found in Title 42, Part 485, Subpart E.

K.A.R. 28-34-145 – Definitions
K.A.R. 28-34-146 – Application process
K.A.R. 28-34-147 – Licensing procedure; renewals
K.A.R. 28-34-148 – Terms of a license; amendments
K.A.R. 28-34-149 – Rural emergency hospital services
K.A.R. 28-34-150 – Conditions of participation
K.A.R. 28-34-151 – Construction standards
K.A.R. 28-34-152 – Laboratory services

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The regulations are not mandated by the federal government. However, to obtain federal designation as a REH, a state may not impose stricter rules than the CMS REH Conditions of Participation. KDHE is electing to adopt the Conditions of Participation promulgated by CMS by reference to ensure that no conflict exists between the federal requirements and state-imposed requirements.

Surrounding states are slowly implementing REH licensing requirements, which puts Kansas at the forefront of implementation thereby making it difficult to provide comparable data.

KDHE is following the same licensing procedures and construction standards that have been in place for critical access hospitals (CAHs) in the state to attempt to mitigate any administrative or financial burden on facilities seeking to be licensed as a REH.

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Section III

Agency analysis specifically addressing the following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The new regulation will not restrict business activities and growth. Indeed, it is anticipated that the proposed regulations will enhance business activities by ensuring rural hospitals can qualify for federal REH designation, which enables them to obtain higher rates of reimbursement for Medicare patients and monthly renumeration for the designation as a REH. The renumeration options that come with being a federal REH designation are anticipated to help rural hospitals struggling to remain open.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

It is hard to quantify the costs to hospitals seeking to become a REH. Each facility would have to conduct a cost-benefit analysis as to the costs of restructuring their current facility to come into compliance with the conditions of participation. The assumption by the Agency is that as facilities must be currently licensed as a CAH, they should be able to easily update their existing emergency services to meet the conditions of participation, should it be needed.

If a facility elects to move forward with becoming licensed as a REH, they are eligible for payment of the Outpatient Prospective Payment System (OPPS) rate plus 5% for all outpatient department services provided to Medicare patients. Additionally, each REH will receive $272,866 per month in 2023. This additional payment will increase each year by the same percentage as the hospital market basket increase, which is dictated by CMS.

The conversion from a CAH to an REH may also lead to losses for a hospital. Specifically, loss of the 340B Drug Pricing Program, which currently enables a CAH to buy outpatient prescription drugs at a discounted rate. The hospital would also lose swing beds as one of the requirements to be an REH is to have the average patient stay below 24 hours.

On a community level, it is anticipated that REH designation would be a net-benefit for a community as it provides an avenue to higher renumeration as well as monthly payments to maintain the designation. This could ease the burden of a rural hospital that may otherwise be struggling financially and considering closure, which for every hospital that closes jobs are lost and community members have to travel further for care. As noted above, one of the biggest changes that could result in costs by the facility and to the wider community is the loss of in-patient/swing beds. A requirement of being a REH is that a facility may not maintain in-patient beds, which means that persons needing extended hospital stays will have to be transferred to hospitals without REH designation. This could mean family/friends would have to travel longer distances to visit hospitalized individuals.

The costs to KDHE will be absorbed into the program as to be eligible to be a REH the facility must already be licensed as a CAH.

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C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

No businesses will be directly affected by the proposed rules and regulations. Eligible hospitals/businesses may elect to become a REH.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

It is hard to quantity the costs to hospitals seeking to become a REH. Each facility would have to conduct a cost-benefit analysis as to the costs of restructuring their current facility to come into compliance with the conditions of participation. The assumption is that as facilities must be currently licensed as a CAH, they should be able to easily update their existing emergency services to meet the conditions of participation, should it be needed. Ultimately, REH status does not guarantee a better financial situation for hospitals that choose to convert. Each facility must conduct its own analysis to determine if conversion is financially advantageous and will meet the unique needs of its community

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

KDHE is electing to keep the licensure process the same as it is for CAHs that will ensure that no additional administrative burden is put on the facility. Additionally, KDHE is keeping construction standards the same thereby not requiring facilities to expend funding to remodel.

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.
Note: Do not account for any actual or estimated cost savings that may be realized.

KDHE cannot quantify the costs to affected businesses, local governments, or members of the public.

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The transition to an REH from a CAH is easily not quantifiable. KDHE believes the transition to a REH from a CAH could be neutral as an REH would be subject to the same or similar regulatory requirements. Thus, thus no additional expenditure by government would necessarily occur. Since a transition theoretically allows the hospital to remain open and potentially be profitable, no additional cost to other businesses or local government should be anticipated. However, given the option of monthly payments and not including the losses of the hospital, a REH would stand to receive over $3 million dollars just on monthly renumeration from CMS ($272,866 x 12 = $3,274,392).

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☒ Yes
☐ No
☐ Not Applicable

If the total implementation and compliance costs exceed $1.0 million over any two-year period through June 30, 2024, or exceed $3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

Documentation attached

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

There are no changes expected in aggregate state revenues and expenditures for the implementation of the proposed regulation change for either the current or the next fiscal year.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

REH status does not guarantee a better financial situation for hospitals that choose to convert. Each facility must conduct its own analysis to determine if conversion is financially advantageous and will meet the unique needs of its community.

G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

REH is seen as a potential solution to continue to provide health care access to the areas affected by the transition. Often this is a measure to not only ensure access, but it also is a mechanism to continue to provide employment to health care workers and professionals. Since there is already a significant shortage of health care workers, the short-term prediction would indicate no loss or net gain as long as the health care providers can maintain services.

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H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

Each hospital that has considered transitioning to an REH would need to conduct a financial analysis of whether the transition would enable the hospital to remain open. Most CAHs that are considering this transition have already determined that their current business models are not conducive to maintaining operations or meeting the health needs of their communities. These issues are addressed through Rural Health, KDHE Community Health Systems, as well as the Kansas Hospital Association.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

☐ Yes If yes, complete the remainder of Section IV.

☒ No If no, skip the remainder of Section IV.

A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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