

(16) "Health systems agency" or "HSA" means an agency designated under 42 USC 300L. In this chapter, where reference is made to a single HSA, the HSA is the agency within the area of which the proposed facility will be constructed or bed expansion or capital expenditure will occur.

(17) "Long-term care facility" means a facility for the developmentally disabled or other nursing home.

(17m) "Long term care services" means services provided by nursing homes and services provided by community agencies to persons diverted or relocated from nursing home placement under a medical assistance waiver.

(18) "Material change in project scope" means the inclusion of beds not originally part of the application or a significant design change in the project which has a financial impact on the project.

(19) "Medical assistance" or "MA" means an assistance program under 42 USC 1396 and ss. 49.43 to 49.49, Stats.

(20) "New beds" means beds allocated for addition to the current licensed bed capacity of any planning area.

(21) "Nursing home" has the meaning specified in 50.01, Stats.

(22) "Person" means an individual, trust or estate, partnership, corporation, state or a political subdivision or agency of a state or local government unit.

(23) "Planning areas" means, for the purpose of nursing home planning and bed allocation, exclusive of FDDs, the health service areas. For purposes of FDD planning and bed allocation, "planning areas" means the health service areas, except for the centers for the developmentally disabled for which the entire state is a single planning area.

(24) "Replacement" means, in reference to a project, the construction of beds or related space to take the place of an equal or greater number of beds or related space in the same planning area.

(25) "Secretary" means the secretary of the department of health and social services.

(26) "Total replacement" or "totally replace" means the closing of a facility and the construction or licensure of an equal or lesser number of beds and ancillary space designed to replace that facility within the planning area.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; cr. (17m), Register, January, 1987, No. 373, eff. 2-1-87.

HSS 122.04 Statewide bed limit. (1) DEPARTMENT RECOMMENDATION.  
(a) *Nursing homes exclusive of FDDs.* The department shall biennially update and submit to the legislature statewide recommended bed limits for nursing homes exclusive of FDDs, taking into account programs the purpose of which is to reduce institutionalization of persons in long-term care facility settings. In developing the recommendation for a new statewide bed limit, the department shall add the following numbers for nursing homes exclusive of FDDs:

1. The number of beds licensed under subch. I of ch. 50, Stats., exclusive of beds in FDDs;

2. The number of beds approved under ch. 150, 1981 Stats., for which obligations have been entered into but which have not yet been licensed and have not had their certificates of need voided;

3. The number of new beds approved under s. 150.29, Stats; and

4. An allotment for new beds which shall be derived by dividing medical assistance reimbursement funds available for new beds as proposed in the following biennial budget by an estimated medical assistance allowable skilled care per diem rate. The resulting patient days shall be divided by the most recent available 3-year average percentage ratio of medical assistance residents to total residents. The patient days shall then be divided by the number of days in the year. This figure is the new allotment. Separate allotments shall be developed for nursing homes exclusive of FDDs. The new bed allotment shall be the maximum number of new nursing home beds exclusive of FDDs which may be approved during the biennium for which the new bed limit is approved by the legislature.

(b) *Facilities for the developmentally disabled.* 1. The department shall biennially update and submit to the legislature statewide recommended bed limits for FDD beds, taking into account programs whose purpose is to reduce institutionalization of developmentally disabled persons. The new statewide bed limit for FDDs shall be established in the same manner as for nursing homes under par. (a) except that the new bed allotment for FDDs may not exceed the number of beds determined to be needed under s. HSS 122.05 (2) (a) and (b).

(2) **INTERIM ADJUSTMENTS BY THE DEPARTMENT.** Interim adjustments to the statewide bed limit may be made by the department for:

(a) *Conversion of community-based residential facilities.* The department shall adjust the total statewide bed limit, on a bed-for-bed basis, for each community-based residential facility currently certified as a medical assistance provider which obtains nursing home or FDD licensure in order to retain medical assistance certification. The effect of the adjustment may be to increase the statewide bed limit. If the number of licensed and approved nursing home beds is less than the statewide bed limit, the department shall count the CBRF beds under this paragraph toward the originally established statewide bed limit;

(b) *Code violations.* The department may decrease the statewide bed limit, on a bed-for-bed basis, to account for nursing home or FDD beds which are licensed but which are not set up or staffed due to life-safety or physical plant code violations. The department shall determine whether the situation is likely to be corrected within the forthcoming biennium. If the beds are not likely to be reopened within the forthcoming biennium, the department shall reduce the statewide bed limit by the number of beds currently out of circulation due to code violations;

(c) *Medical assistance waivers.* The department shall decrease the statewide bed limit, on a bed-for-bed basis, to account for nursing home or FDD beds closed under the medical assistance waiver specified in 42 USC 1396n(c) or under other medical assistance waivers specified in 42 USC 1396 to 1396n; and

(d) *Wisconsin center reductions.* The department shall decrease, on a bed-for-bed basis, the statewide bed limit for FDDs by each bed re-

moved at the Wisconsin centers for the developmentally disabled as a result of the department's community integration program under s. 46.275, Stats.

(c) *Other allowable bed reduction criteria.* 1. The department may decrease the statewide bed limit, on a bed-for-bed basis, to account for beds made available by the reduction of licensed beds not included in pars. (b) to (d). The department may decrease the statewide bed limit under this paragraph only if:

a. The county in which the beds were located had more than 125 percent of the statewide average number of nursing home beds per 1,000 persons 65 years of age or older, as determined under subd. 2, prior to the reduction in that county; and

b. No decrease under this paragraph may result in the county in which the bed reduction occurred having fewer than the statewide average number of nursing home beds per 1,000 persons 65 years of age or older.

2. The statewide average number of nursing home beds per 1,000 persons 65 years of age or older in subd. 1 is calculated by dividing the total current number of licensed nursing home beds exclusive of FDD beds in the state, as reported by the department's bureau of quality compliance, by the total current estimated population of persons 65 years of age or older, as determined by the Wisconsin department of administration, and multiplying that result by 1,000.

(3) **PUBLICATION OF ADJUSTMENTS.** The department shall publish any adjustments to the statewide bed limit in the newsletter of the department's bureau of planning and development and in a newspaper of general circulation. This publication shall occur by the 20th day of the month following the adjustment date.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; cr. (2) (e), Register, January, 1987, No. 373, eff. 2-1-87.

**HSS 122.05 Bed allocation methodology. (1) NURSING HOME BEDS EXCLUSIVE OF FDD BEDS. (a) Distribution of the statewide allotment of new beds.** In distributing among planning areas new nursing home beds exclusive of FDD beds from the allotment under s. HSS 122.04 (1) (b) 4., the department shall proceed as follows:

1. Calculate for each planning area the population growth for the age cohorts under 65, 65 to 74, 75 to 84 and over 84 years of age for a 3-year period beginning in the calendar year for which the most current data on utilization of nursing homes are available;

2. Divide each planning area's population growth for each age cohort by the state growth in population for each cohort for those years to obtain the percentage that a planning area's growth represents of the total state growth by cohort;

3. Ascertain the statewide nursing home utilization percentage for each of the age cohorts in subd. 1 and multiply these by the new bed allotment for nursing homes exclusive of FDDs calculated pursuant to s. HSS 122.04 (1) (a) 4. to get the statewide allotment for each age cohort;

4. Multiply the statewide allotment for each age cohort by each planning area's percentage of state growth for its respective cohort calculated under subd. 2;

5. Add the 4 age cohort allotments for each planning area to determine the unadjusted new bed allotment for each planning area for nursing homes exclusive of FDDs;

6. Adjust downward the allotment for each planning area that has more beds per 1,000 residents age 65 and over than there are beds per 1,000 residents age 65 and over statewide by multiplying the unadjusted allotment for the planning area by the ratio of the number of existing and approved beds per 1,000 residents age 65 and over statewide to the number of existing and approved beds per 1,000 residents age 65 and over in the planning area as calculated from county level data, and subtracting the result from the unadjusted allotment. The result shall be the maximum new bed allotment for that planning area; and

7. Increase the unadjusted allotment for the remaining planning areas proportionately so that the total new bed allotments for all planning areas equal the total statewide new bed allotment calculated pursuant to s. HSS 122.04 (1) (b) 4. The result shall be the maximum new bed allotments for these planning areas.

(b) *Distribution of a planning area's allotment of new beds.* 1. The department shall distribute new nursing home beds exclusive of FDD beds within a planning area by:

a. Calculating the age-specific statewide use rates for long-term care services by adding the total statewide number of persons being served under a medical assistance waiver, exclusive of persons relocated from a state center for the developmentally disabled under s. 46.275, Stats., and the total statewide number of persons utilizing nursing homes, exclusive of FDDs, for each of the age groups under 21, 21 to 54, 55 to 64, 65 to 74, 75 to 84 and 85+, and dividing the resulting sum for each age group by the current total statewide population for that age group. Utilization data shall be for December 31 of the most recent year for which data is available;

b. Determining the age-specific expected county use of long-term care services by multiplying each age-specific statewide use rate by the actual current population for each age group in each county as estimated by the Wisconsin department of administration;

c. Determining each county's total expected use of long-term care services by summing the age-specific calculations in subpar. b for each county;

d. Determining the actual countywide use of long-term care services by adding the total number of residents of the county reported in the department's annual survey of nursing homes as residing in nursing homes, exclusive of FDD's, on December 31 of the recent survey year, and the number of persons being served under a medical assistance waiver, exclusive of persons relocated from a state center for the developmentally disabled under s. 46.275, Stats., in the same year in that county; and

e. Determining the ratio of actual use to expected use by dividing the result of the calculation in subpar. d by the result of the calculation in subpar. c.

2. Except as provided in subd. 3, only applicants whose projects would be located in counties which meet both of the following conditions are eligible to compete for new beds:

a. The ratio of actual use to expected use as calculated in subd. 1 e is less than one; and

b. The countywide occupancy rate as reported in the most recently available annual survey of nursing homes is greater than 94%. The countywide occupancy rate is calculated by dividing the sum of all patient days for all nursing homes exclusive of FDDs in a county, as reported in the annual survey of nursing homes, by the number of days in the calendar year and then dividing that result by the total current number of licensed nursing home beds in that county, exclusive of FDDs, as reported by the department's bureau of quality compliance.

3. If the ratio of actual use to expected use in a county is greater than one and that county is contiguous to another which meets the conditions set forth in subd. 2, that county is eligible to compete for new beds if the HSA has documented in its health systems plan evidence of substantial problems regarding availability of or accessibility to nursing home and other long-term care support services within the county.

4. a. The department shall review the methodology under subds. 1 and 2 every 3 years in consultation with the HSAs, the area agencies on aging, the county social service or human service departments and representatives of the nursing home industry.

b. The department shall annually update data necessary to establish a priority list of counties for the purpose of allocating beds. The department may revise the priority list between annual updates to reflect changes in bed capacity resulting from approvals under this chapter, reductions in the capacity of existing nursing homes, facility closures, or relocations of beds or facilities within a planning area.

(c) *Redistribution of closed nursing home beds.* 1. The department may distribute nursing home beds, exclusive of FDD beds, made available in the state as a result of facility closure or bed capacity reductions which were not closed under a medical assistance waiver, as specified in 42 CFR 1396n, and which were not replaced by CBRF beds converting to nursing home licensure. Except as provided in s. 150.40, Stats., applications to replace or redistribute closed beds may be submitted only from counties which are eligible to compete for new beds under par. (b).

2. Except as provided in s. 150.40, Stats., the department shall redistribute beds under this paragraph to the planning area in which they were originally located.

3. The statewide average of nursing home beds for each 1,000 persons 65 years of age or over referred to in s. 150.40, Stats., is calculated by dividing the total current number of licensed nursing home beds, exclusive of FDD beds, in the state, as reported by the department's bureau of quality compliance, by the total current estimated population of persons 65 years of age and older, as determined by the Wisconsin department of administration, and multiplying that result by 1,000.

4. The department may not approve more beds for redistribution within a planning area, or within a county if s. 150.40, Stats., is applica-

ble, than were made available as a result of facility closure or bed reduction in that planning area or county.

(2) **FDD BEDS.** (a) The department shall not approve the addition of new beds to a state center for the developmentally disabled or other FDD licensed under subch. I of ch. 50, Stats., unless the beds are needed to serve persons who cannot adequately be served in an existing FDD, another nursing home or in a less costly or less restrictive setting. Need for the beds shall be determined by the department through an objective analysis of the developmentally disabled population in the planning area after consultation with the appropriate HSA.

(b) The number of new beds allocated to the centers and other FDDs in an FDD planning area shall not exceed the number of persons requiring FDD care as determined under par. (a) for that planning area.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; r. and recr. (1) (b) and (c), Register, January, 1987, No. 373, eff. 2-1-87.

**HSS 122.06 Request for applications. (1) BEDS.** (a) *New beds.* 1. After amendment of the statewide bed limit by the legislature, the department shall accept applications to fill the allotments for new beds, if any, for each planning area. Allotments shall be determined in the manner described in s. HSS 122.05. Application shall be made according to the following schedule:

- a. In January for all counties located in health service area #2;
- b. In April for all counties located in health service area #1;
- c. In July for all counties located in health service areas #3, 4, and 7; and
- d. In October for all counties located in health service areas #5 and 6.

2. The department shall request applications for new beds once from each planning area during the first half of each biennium. If the number of new beds approved for an area is less than the planning area's adjusted allotment, a second request for applications may be made during the second half of the biennium according to the schedule in par. (a).

(b) *Replacement beds.* The department shall annually accept applications to replace beds in a planning area which have been de-licensed but which were not closed under a medical assistance waiver or which were not replaced by CBRF beds which converted to nursing home licensure in order to retain medical assistance certification. Application shall be made according to the schedule in par. (a).

(2) **FACILITY REPLACEMENTS AND CAPITAL EXPENDITURES OVER \$600,000.** The department shall annually request applications for projects to replace all or a portion of an existing nursing home or to make a capital expenditure of over \$600,000 for a nursing home but which do not involve the addition of beds. The department shall request applications according to the schedule in sub. (1).

(3) **CENTERS.** The department shall annually solicit applications from the state centers for the developmentally disabled to relocate beds, renovate or replace beds or a facility, increase bed capacity or construct a new facility, or undertake a capital expenditure exceeding \$600,000. The

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schedule for submitting applications shall be determined each year by the department.

(4) **APPLICATION PROCESS.** (a) *Notice requesting applications.* The request for applications shall be published in a major daily newspaper in each affected planning area on the first and second working days of the month during which requests are to be made. The notice shall state the deadline by which all applications are to be received.

(b) *Applications forms.* All applications shall be submitted on forms prescribed by the department. A prospective applicant may obtain the forms from the HSA serving the project's planning area or, if the project will be located outside the service area of any HSA, from the department.

Note: For copies of application forms for projects located outside HSA service areas, contact Bureau of Planning and Development, P.O. Box 1808, Madison, Wisconsin 53701-1808.

(c) *Period for accepting applications.* The department shall accept applications submitted within 60 days following publication of the request for applications, except as provided in sub. (10). All applications shall be submitted concurrently to the department and the appropriate HSA. The department shall return any application which:

1. Proposes to add new beds in a planning area, county or service area for which a request for applications was not made;
2. Exceeds the new bed allotment for the planning area;
3. Was submitted more than 60 days after the request for applications was published; or
4. Was submitted prior to publication of the request for applications.

(d) *Review for completeness.* 1. Each application submitted under subs. (1), (2) or (3) shall be reviewed by the department for completeness. An application shall be deemed incomplete if the applicant:

- a. Fails to provide all of the requested information;
- b. Provides the information in a manner which is illegible or otherwise unusable by the department; or
- c. Provides information which contradicts or is not justified by other materials in the application.

2. The department, in consultation with the HSA, shall notify the applicant of the additional information requirements within 10 working days following receipt of the application by the department or by the applicable HSA, whichever date of receipt is later.

3. The applicant shall provide the required additional information within 30 days following the closing date for accepting applications.

4. The department shall return all applications for which additional information has not been received by the deadline established in subd. 3.

5. Except as provided in subd. 4., the department shall declare all applications complete 60 days after the date of publication of the request for applications, or 90 days from that date if an application under sub. (1), (2) or (3), including any application under sub. (1) undergoing concurrent review, was originally declared incomplete and the additional in-

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formation requested by the department was received within 30 days following the closing date for accepting applications.

**Note:** Upon written request, the department will provide technical assistance to any small business, as defined in s. 227.016 (1) (a) Stats., or other small organization with fewer than 25 full-time employees or annual revenues of less than \$2,500,000 regarding application materials and procedures. Requests should be sent to the Bureau of Planning and Development, P.O. Box 1808, Madison, Wisconsin 53701-1808.



(f) *Department's initial finding.* The department shall issue its initial finding to approve or reject the application within 60 days following receipt of a complete application. The initial finding shall be based on the criteria specified in s. HSS 122.07.

(g) *Hearing.* Any adversely affected applicant or HSA shall have 10 days after the date of the initial finding to request a public hearing to challenge the initial finding on an application. Public hearings shall be held in the manner specified in s. HSS 122.08. If no requests for a hearing are made or if they are received after the 10-day limit, the initial finding becomes the department's final action.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

**HSS 122.07 Review criteria and selection process. (1) REVIEW CRITERIA.** The department shall use the criteria set out in this subsection in its review of all applications for project approval. Cost containment shall be the first priority in applying these criteria. The department may not approve a project unless the applicant has demonstrated that:

(a) The project is consistent with the state health plan and other long-term care support plans developed by the department.

(b) Medical assistance funds appropriated are sufficient to reimburse the applicant for providing nursing home or FDD care.

(c) The cost of renovating or replacing the facility or adding new beds is consistent with the cost of similar nursing home or FDD projects recently approved by the department and is reasonable based on independent analyses using industry-recognized cost-estimating techniques, and:

1. The proposed cost per bed for total facility replacement or for new facilities and beds does not exceed the following per bed cost expressed in the formula for nursing homes other than FDDs, that C is less than or equal to 1.2 (S) (F) and in the formula for FDDs and for other nursing homes in which more than 50% of the residents calculated on an annual basis have a physical illness as their primary diagnosis and also have a mental illness, either of which would independently require nursing care, that C is less than or equal to 1.3 (S) (F).

a. "C" in this formula means maximum cost per bed using the capitalized project costs, including site improvements, buildings, fixed equipment, interest during construction and professional and financing fees, calculated to the midpoint of construction.

b. "S" equals \$31,000.

Note: \$31,000 is the statewide cost per bed for the base year 1983.

c. "F" in this formula means inflation factor.

Note: The department uses the inflation estimates published in *Engineering News Record's* Building Cost Index.

2. The proposed equivalent cost per bed for renovation and partial replacement projects does not exceed the per bed cost as expressed in the formulae for nursing homes other than FDDs, the  $C_e$  is less than

1.2 (S) (F)

and in the formula for FDDs and for other nursing homes in which more than 50% of the residents calculated on an annual basis have a physical illness as their primary diagnosis and also have a mental condition, either of which would independently require nursing care, that  $C_e$  is less than 1.3 (S) (F).

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a. " $C_e$ " in this formula means the maximum equivalent per bed cost, calculated as follows:

$$C_e = \frac{\text{capitalized project costs}}{\text{(remaining useful life of affected areas) (total beds)}} + \frac{\text{current annual depreciation}}{\text{total beds}}$$

b. "S" and "F" in this formula are as defined in subd. 1.

Note: The maximum capital allowances calculated pursuant to par. (c) are not to be used by applicants as the expected cost of projects. Applicants are encouraged to seek less costly alternatives to the state maximums and all applications will have to meet all review criteria before undergoing the selection process in sub. (2).

(d) The project represents the most cost-effective, reasonable and feasible alternative for renovation or replacement of a facility, for the addition of beds to a facility or for the construction of a new facility.

1. The applicant shall provide an analysis which clearly defines all other reasonable alternatives such as:

- a. Variations in functional program;
- b. Renovation instead of replacement;
- c. Reductions in bed capacity;
- d. Variations in facility design; and
- e. Variations in methods or materials of construction.

2. The analysis shall include an evaluation of the existing physical plant.

3. The analysis shall include a life-cycle cost analysis for each alternative studied, using forms provided by the department. In this subsection "life cycle" means the number of years for which alternatives are compared, and "life-cycle cost" means all relevant costs associated with a project during the project's defined life cycle.

Note: Copies of the life-cycle cost analysis form will generally be included in the application materials. They may be obtained separately from the Bureau of Planning and Development, P.O. Box 1808, Madison, Wisconsin 53701-1808.

4. The department may independently develop its own alternatives to compare with those developed by the applicant.

(e) A need for additional beds exists in the planning area in which the project would be located. No new beds may be approved in any planning area if their addition would exceed the planning area's adjusted allocation, calculated pursuant to s. HSS 122.05.

(f) The project is consistent with local plans for developing community-based long-term care services. These plans shall include those developed by HSAs and local units of government.

(g) Necessary health care personnel, and capital and operating funds for provision of the proposed nursing home services are available, as follows:

1. The project will meet minimum staffing and financial requirements developed by the department pursuant to ch. H 34 [HSS 134] or HSS 132;

2. The facility will be located to assure reasonable access to nursing staff, emergency medical care, physician coverage, acute care services and ancillary services; and

3. Sufficient cash resources and cash flow exist to pay operating and initial start-up costs.

(h) The project is financially feasible, capable of being undertaken within one year of approval and completed within a reasonable period of time beyond the one-year approval period, as evidenced by:

1. The applicant's demonstration of ability to secure adequate funds to finance the project. The applicant shall have adequate capacity to incur the debt associated with the project. Applicants shall have the ability to pay long-term debt through their present and future cash flow and profitability positions;

2. The availability of financing at average or below market rates for the class of home during the period of validity of the approval. Classes of homes are governmental, proprietary and nonprofit. Projects relying on sources of financing which historically take longer to process than the period of validity of an approval shall be rejected unless there is clear and definite proof supplied by the applicant that the funding source will be able to make adequate funds available within the period of validity of the approval; and

3. The reasonableness and attainability of the applicant's construction schedule.

(i) Appropriate alternative methods for providing nursing home or FDD care are unavailable in the planning area. Alternative methods shall be deemed unavailable if the project is consistent with long-term care initiatives developed by the department.

(j) The existing and proposed quality of care is satisfactory, as determined by:

1. The department's investigations. No approvals may be granted to any person who owns or operates a facility with one or more uncorrected class A or class B violations unless the project is specifically designed to remedy those violations, or to any person who owns or operates a facility against which a medical assistance or medicare decertification action is pending;

2. The department's review of materials submitted by the applicant, which may include an independent performance evaluation of an existing facility, an evaluation of other homes owned and operated by an applicant seeking approval for a new facility, and patient satisfaction surveys, where available;

3. Recommendations or comments from affected parties regarding the quality of care in facilities owned and operated by the applicant; and

4. For applications proposing replacement or relocation of beds, approval by the department of a plan for the placement or relocation of persons residing in those beds, based on the census of the FDD or other nursing home at the time of submission of the application.

(k) The project is consistent with all applicable federal, state and local licensing, physical plant, zoning and environmental laws.

(2) RANKING AND SELECTION PROCESS. (a) Applications for new or redistributed beds which meet all of the criteria in sub. (1) shall be subject to the following final selection process:

1. Applications shall be ranked in the order of their proposed composite per diem rates, beginning with the lowest and ending with the highest. Rates within one percent of each other shall be considered equal for purposes of ranking. The composite per diem rate shall be calculated as follows:

a. Multiply the proposed skilled nursing facility per diem rates, exclusive of supplements, for each payment source by the percentage of projected skilled nursing facility patient days by payment source; and

b. Add all the products of the multiplication in subpar. a to obtain the composite per diem rate;

2. The department shall review the applicant's methodology for calculation of the proposed rates for consistency with current reimbursement practices and reasonableness. An applicant whose rates are found to be inconsistent or unreasonable will be removed from the selection process;

3. The department shall approve projects in the order of their ranking until all beds allotted to a planning area are distributed;

4. The department may approve an application proposing a higher per diem rate than others undergoing concurrent review if the applicant can demonstrate that the application would substantially resolve a significant problem identified in the state health plan and the HSA plan with respect to:

a. The existing distribution of beds in the county in which the project would be located, or in contiguous counties;

b. The need to serve a special diagnostic group of inpatients in the planning area or county in which the project would be located; or

c. The existing distribution of population within the planning area or county in which the project would be located; and

5. If the composite per diem rate for 2 or more of the applicants undergoing concurrent review is equal, the department shall approve or deny those projects as follows:

a. If the total number of beds proposed by all applicants undergoing concurrent review is less than the total number of beds available, each of the projects shall be approved; and

b. If the total number of beds proposed by all applicants undergoing concurrent review is greater than the number of beds available, applica-

tions shall be ranked on the basis of per bed cost as calculated in sub. (1) (c), beginning with the lowest and ending with the highest. The department shall then approve projects in order of this ranking until all beds available are distributed.

(b) Applications for renovation proposals, replacement facilities and capital expenditures over \$600,000 which do not affect bed capacity and which meet all criteria in sub. (1) shall be approved unless the per diem rates proposed as a result of the project are inconsistent with those of similar FDD or other nursing home projects recently approved by the department.

(c) In applying pars. (a) and (b), the department shall consider the recommendations of HSAs and the comments of affected parties.

(d) The department may not approve new beds if this would cause the statewide bed limit to be exceeded.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; am. (2) (a) (intro.) and 1., cr. (2) (a) 5., Register, January, 1987, No. 373, eff. 2-1-87.

**HSS 122.08 Hearing process. (1) RIGHT TO A HEARING.** An applicant whose project is rejected or any adversely affected HSA may request a public hearing to review the department's initial finding.

**(2) REQUEST FOR A HEARING. (a)** An applicant or HSA desiring a public hearing shall submit a written request, no later than 10 days after the issuance of the initial finding, to both the department's division of health

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(b) Approval holders shall report to the department any anticipated cost overrun.

(c) 1. An approval holder who identified a cost overrun on an approved project shall submit another application for review in the manner described in s. HSS 122.06 (10).

2. The original approval is not affected by the submission of an application involving a cost overrun on a previously approved application. If the department approves the overrun, the original approval shall be amended accordingly. If the department does not approve the overrun, the original approval shall be unchanged.

(d) The department shall not approve an application for a project involving a cost overrun on a previously approved application:

1. If an obligation exceeding the capital expenditure maximum was incurred by the approval holder before the holder notified the department of the cost overrun;

2. If the cost overrun is based on inflation rates which exceed actual rates reported in the *Engineering News Record's* Building Cost Index;

3. If the cost overrun is the result of a material change in the scope or size of an approved project; or

4. If the cost overrun results in a project that would not be approved under s. HSS 122.07 (1) or (2).

(3) CIVIL FORFEITURES. (a) The department shall use the following schedule for determination of forfeitures resulting from approved cost overruns on previously approved projects:

1. A cost overrun resulting from the actual inflation rate which exceeds the rate projected in the approved application or is less than 10 percent of the approved project cost or \$300,000, whichever is greater, shall be subject to a forfeiture equal to 10% of the overrun.

2. A cost overrun which is more than 10% or more of the project cost or \$300,000, whichever is greater, shall be subject to a forfeiture equal to 15 percent of the overrun; and

3. If a person incurs a second cost overrun on an approved project, the department shall assess a forfeiture equal to 30% of the overrun.

(b) 1. Where a project is subsequently approved after being initiated without departmental approval, the person operating the project shall be subject to a single forfeiture using the following schedule:

a. For an expenditure greater than \$600,000 but no more than \$660,000, the person operating the project shall pay a forfeiture equal to 10% of the expenditure exceeding \$600,000;

b. For an expenditure greater than \$660,000 but no more than \$900,000, the person operating the project shall pay a forfeiture equal to 15% of the expenditure exceeding \$660,000, plus the dollar amount specified in subd. 1; and

c. For an expenditure greater than \$900,000, the person operating the project shall pay a forfeiture equal to 50% of the expenditure exceeding \$900,000, plus the dollar amounts specified in subds. 1 and 2;

2. If the capital expenditure limits in s. 150.21 (3) and (4), Stats., are adjusted under s. 150.15, Stats., the capital expenditures listed in subd. 1. shall be automatically adjusted proportionately.

(c) 1. The department may not approve a cost overrun for a project subject to a forfeiture under pars. (a) or (b) until the forfeiture has been paid.

2. The department may not subsequently approve a project which was initiated without departmental approval and which involved construction of space designed to be utilized for a future FDD or other nursing home or to increase the bed capacity of a FDD or other nursing home.

(4) REPEAT VIOLATIONS. (a) The department shall reject an application for approval of a project from any person who has incurred 2 penalties under this chapter within a 5-year period, except for penalties assessed for cost overruns caused by the actual inflation rate exceeding the inflation rate stated in the original application or caused by code corrections mandated by the department as part of an approved plan of correction issued after the original approval.

(b) The department shall impose deadlines for compliance with any approval granted to a repeat violator. Failure to meet the deadlines shall result in voiding of the approval.

(5) MEDICAL ASSISTANCE LINKAGE. (a) 1. Any person submitting an application under this chapter shall state in the application the medical assistance rates anticipated for the first full year of operation following completion of the project or licensure of new beds. These rates shall be the maximum allowable reimbursement granted by the department for the first full year of operation. If the medical assistance reimbursement formula generates per diem rates which are less than those stated in the application, the lower rates shall prevail.

2. For the purposes of rate calculations for renovation projects, the useful building life used for depreciation shall be the same as that stated in the application in s. HSS 122.07 (1) (c) 2. for calculating equivalent cost per bed. The useful life selected shall remain constant for the life of the building.

(b) Any person submitting an application for approval of a cost overrun under sub. (2) (c) shall state the impact on medical assistance per diem rates stated in the original application. If approved, the rates in the new application shall be the medical assistance per diem rates for the first full year of operation following completion of the project or licensure of new beds.

(6) TRANSFER OF APPROVAL. An approval is issued in the name of the person submitting an application. Any person who takes a partner after receiving a project approval shall retain an equal or greater financial interest in the project for the approval to remain valid. The sale, lease or donation of a nursing home before the completion or licensure of a project at that nursing home voids the approval.

(7) VALIDITY OF APPROVAL. (a) An approval is valid for one year from the date of issuance unless extended under sub. (8).

(b) The department shall revoke an approval at the end of the period of validity of an approval if the status reports required under sub. (1)



indicate that financing in an amount sufficient to complete the project has not been obtained, an obligation has not been incurred for the entire project or 20% of the approved project cost, including fees, has not been spent. An approval holder has obtained financing in an amount sufficient to complete the project when:

1. The interim or long-term mortgage has been executed by all parties, and the proceeds are available to the borrower in an amount sufficient to complete the project; or

2. The bonds have been sold, either publicly or privately, and the proceeds are available to the borrower in an amount sufficient to complete the project.

(8) REQUEST FOR EXTENSION OF PROJECT VALIDITY. (a) A person may request an extension of up to 6 months in the period of validity of an approval. The request shall include documentation of the following:

1. Names of all contractors, subcontractors or suppliers against whom a job action was incurred or a bankruptcy was filed;

2. Dates on which bankruptcies or strikes occurred and the resulting length of delay in project implementation, and dates on which a fire or natural disaster occurred, the extent of damage, and the resulting length of delay in project implementation; and

3. Any cost overruns anticipated as a result of the extension.

(b) Cost overruns on projects for which an extension has been granted shall be reviewed in the manner described in s. HSS 122.06 (10).

(c) The department may grant an extension only if the project is significantly delayed or damaged by fire or natural disaster, or if a strike against or bankruptcy of a contractor, subcontractor or major supplier previously committed to the project occurs.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; am. (7) (b) (intro.), Register, January, 1987, No. 373, eff. 2-1-87.

## APPENDIX A

Designated Health Service Areas in Wisconsin  
Under 42 USC 300L  
[HSS 122.03 (15)]*Health Service Area #1*

Columbia, Dane, Dodge, Grant, Green, Iowa, Jefferson, Lafayette, Richland, Rock, Sauk counties

*Health Service Area #2*

Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, Waukesha counties

*Health Service Area #3*

Calumet, Fond du Lac, Green Lake, Marquette, Outagamie, Waupaca, Waushara, Winnebago counties

*Health Service Area #4*

Brown, Door, Kewaunee, Manitowoc, Marinette, Menominee, Oconto, Shawano, Sheboygan counties

*Health Service Area #5*

Barron, Buffalo, Chippewa, Clark, Crawford, Dunn, Eau Claire, Jackson, La Crosse, Monroe, Pepin, Pierce, Polk, Rusk, St. Croix, Trempealeau, Vernon counties

*Health Service Area #6*

Adams, Florence, Forest, Juneau, Langlade, Lincoln, Marathon, Oneida, Portage, Taylor, Vilas, Wood counties

*Health Service Area #7*

Ashland, Bayfield, Burnett, Douglas, Iron, Price, Sawyer, Washburn counties