

## Chapter CCC 1

### CAPITAL EXPENDITURE REVIEW PROGRAM

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Note: Chapter CCC 1 was created as an emergency rule effective July 1, 1993.

#### Subchapter I — Definitions and General Provisions

**CCC 1.01 Authority and purpose.** This chapter is promulgated under the authority of s. 150.78, Stats., to implement subchs. I and III of ch. 150, Stats. Its purpose is to promote the public interest through health care cost containment. It provides definitions, standards and procedures to be used by the commission to implement health system cost containment strategies through a capital expenditure review program for hospitals, ambulatory surgery centers and other health care facilities, and for home health agencies. The commission shall promote the orderly and cost effective development of an efficient state health care system, efficient health facilities and services, price and service competition among both regulated and non-regulated providers and geographic access to care for all Wisconsin citizens.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

#### CCC 1.02 Definitions. In this chapter:

(1) "Acquire" means to gain ownership or control through lease, purchase, merger, donation or the assumption of substantial management powers and duties relating to the acquired entity.

(2) "Affected party" means the applicant, a local planning agency, a governmental agency, another person providing similar services in the applicant's market area, the public to be served by the proposed project, third party payers, or any other person who the commission determines is affected by an application for approval of a project.

(3) "Air ambulance services" means "air transport services" as used in s. 150.61 (2), Stats., which is the regular offering of transportation to ill or injured persons in an ambulance.

(4) "Ambulatory surgery" means a surgical procedure that has all of the following characteristics:

(a) May be safely performed on an outpatient basis.

(b) Is not commonly performed and may not be safely performed in a physician's office.

(c) Requires a dedicated operating suite and a postoperative recovery room or short-term convalescent room.

(d) If performed under general anesthesia, is usually 90 minutes or less in duration.

(5) "Ambulatory surgery center" means a facility that holds itself out as performing ambulatory surgery for patients on a routine, organized basis with scheduled hours of operation and dedicated staff.

(6) "Analysis area" means an area within the state established by the office of health care information for the collection, organization and analysis of health care data.

(7) "Application" means the document submitted by an applicant to the commission for the purpose of obtaining approval of a project.

(8) "Approval" means a written statement from the commission authorizing a person to commence implementing a project under review.

(9) "Approved bed capacity" means the number of hospital beds listed on a hospital approval issued by the department of health and social services's bureau of quality compliance on July 1, 1992, or as modified in subsequent approvals.

(10) "Burn care services" means the specialized facilities, equipment, personnel and other institutional resources to provide care to severely burned patients. Severely burned patients are those with any of the following:

(a) Second degree burns of more than 25% total body surface area for adults or 20% total body surface area for children.

(b) Third degree burns of more than 10% total body surface area.

(c) Any severe burns of the hands, face, eyes, ears or feet.

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(d) All inhalation injuries, electrical burns, complicated burn injuries involving fractures and other major traumas and all other poor risk factors.

(11) "Capital expenditure" means an expenditure that under generally accepted accounting principles is not properly chargeable as an expense of operations or maintenance. A "capital expenditure" includes a lease if it is used as a means of financing the acquisition of a capital asset.

(12) "Cardiac catheterization services" means the specialized facilities, equipment, personnel and other institutional resources to perform cardiac catheterization procedures and to provide directly related inpatient services before and after the procedures.

(13) "Cardiac surgery services" means cardiac surgery procedures and all of the specialized rooms, equipment, personnel and other resources to perform cardiac surgery, including all directly related inpatient services provided to cardiac surgery patients before and after cardiac surgery.

(14) "Clinical medical equipment" means any single piece of equipment that performs functions or tests directly on a patient or on patient tissues, including all of its components specific to that piece of equipment needed to facilitate functioning of the equipment or sharing of the equipment among users.

(15) "Clinically efficacious" means that the technology has been demonstrated to have the effect it purports to have or is represented to have under the conditions of use prescribed on the basis of well-controlled investigations, including clinical investigations, by experts qualified by training and experience to evaluate the effectiveness of the device or treatment.

(16) "Commission" means the cost containment commission.

(17) "Cost-effective" means a solution that is economical in terms of tangible benefits to patients produced by money spent.

(18) "Cost overrun" means an obligation exceeding the maximum capital expenditure authorized by an approval.

(19) "Dollar threshold" means the minimum capital, other expenditures or activities which are subject to review under this chapter.

(20) "Emergency situation that threatens patient safety" means a situation, physical condition, practice, method or operation that presents an imminent danger of death or of severe physical or mental harm to any patient of a project applicant.

(21) "End-stage renal disease services" means the specialized facilities, equipment, personnel and other institutional resources to perform a regular course of dialysis or renal transplantation to maintain life.

(22) "Generally accepted accounting principles" means uniform procedures, methods and standards set by organizations such as the financial accounting standards board which accountants employ in recording and reporting financial information.

(23) "Health professional shortage area" or "HPSA" means one of the areas of the state designated under 42 CFR part 5, appendix A.

(24) "Home health agency" has the meaning specified in s. HSS 133.02 (3).

(25) "Hospital" has the meaning specified in s. HSS 124.02 (6).

(25m) "Hospital cost index" means the annual index published by the commission comparing hospitals based on their costs to patients and payers. Each hospital shall be ranked based on its weighted average charges for inpatient discharges compared to the average charges for hospitals by analysis area and on a statewide basis for similar diagnostic related groups. The calculation shall be risk adjusted using methodology employed by the office of health care information. Hospital charges shall be discounted for deductions granted to payer groups, charity care, bad debt, and expenses for medical education at teaching hospitals. The most recently available data from the office of health care information shall be used for these calculations.

(26) "Innovative medical technology" means equipment or procedures that are potentially useful for diagnostic or therapeutic purposes and that introduce new technology in the diagnosis and treatment of illness but that have not been proven safe, clinically efficacious, cost-effective or appropriate for a clinical setting, or that are being assessed by the federal office of health technology assessment or are the first generation of a technology that is likely to undergo rapid change and improvement.

(27) "Life cycle cost" means all relevant costs associated with a project during the length of time over which alternatives are compared.

(28) "Market area" means the geographic area served or proposed to be served by a person subject to this chapter or as determined by the commission.

(29) "Market share population" means the ratio of the applicant's projected number of patients from a market area to the total number of patients from that market area.

(30) "Material change in project scope" means the inclusion of services which were not in the application, or a significant change in the project which has a significant financial impact on the project.

(31) "Medical assistance program" means the assistance program operated by the department of health and social services under ss. 49.43 to 49.497, Stats., and chs. HSS 101 to 108.

(32) "Neonatal intensive care services" means a collection of neonatal intensive and intermediate care beds in a service combining specialized facilities, staff, and support services necessary for the intensive care and management of high-risk neonatal patients.

(33) "Net operating revenue" means total patient charges minus deductions from revenue. Deductions from revenue are the portion of charges that were billed to patients but not received by hospitals due to reduced reimbursement from both government and private sources,

and charity care. Bad debt is not a deduction from revenue.

(34) "Obligate" means to enter into a binding enforceable contract for the construction, lease, donation, acquisition or financing of a capital asset.

(35) "Office of health care information" means the office responsible for the collection and dissemination of health care information under ch. 153, Stats.

(36) "Organ transplant services" means the offering of any one type of organ transplant to one or more patients, either on an ongoing or a one-time basis.

(37) "Person" means any individual, partnership, association or corporation, the state, a political subdivision or agency of the state or of a local unit of government or any other entity included under s. 990.01 (26), Stats.

(38) "Project" means the proposed service, unit, expenditure or activity subject to review under s. CCC 1.03 (2).

(39) "Project costs" means any of the following:

(a) For equipment or construction projects, all physical asset costs, costs of professional services associated with project development, financing costs and contingencies.

(b) For services new to a hospital, the annual net operating revenues for the new service as defined in s. CCC 1.03 (4) (a) 3.

(c) For clinical medical equipment, the cost of the equipment and related costs of installation.

(d) For home health agencies and ambulatory surgery centers, all physical asset costs, costs of professional services associated with project development, financing costs and contingencies.

(e) For hospital acquisitions, the net value of property, physical plant and equipment being acquired.

(f) For hospital acquisitions by donation or leasing, the fair market value of the acquired equipment or facility.

(g) For mergers involving a hospital, the net value of property, physical plant and equipment of the entity being acquired as designated by the applicant.

(40) "Radiation therapy services" means a clinical medical service in which patients with cancer, other tumors, or neoplasms are treated with ionizing radiation.

(41) "Service corporation" has the meaning specified in s. 180.1901 (2), Stats.

(42) "State health services plan" or "SHSP" means the document adopted by the commission pursuant to s. 150.82, Stats.

(43) "Substantial and continuing progress" means spending more than 20% of a project's approved cost, including fees for legal services, planning studies, financing, consultants, inspections, permits, architectural services and interest, during construction.

(44) "Working day" has the meaning prescribed in s. 227.01 (14), Stats.

**CCC 1.03 Applicability.** (1) **AFFECTED APPLICATIONS.** This chapter applies to any reviewable project undertaken on or after May 1, 1994.

(a) Emergency rules adopted under s. 9125 (3) (b) and (e) and (4) of 1991 Wis. Act 250 and s. 227.11 (2), Stats., to implement s. 9125 (3) of 1991 Wis. Act 250 apply to reviewable projects undertaken prior to July 1, 1993.

(b) Emergency rules adopted July 1, 1993 under s. 150.78, Stats., as created by 1991 Wis. Act 250 apply to reviewable projects undertaken on or after July 1, 1993 and prior to May 1, 1994.

(c) Emergency rules adopted October 1, 1993 under s. 150.78 (4), Stats., as created by 1993 Wis. Act 16 apply to reviewable projects undertaken on or after October 1, 1993 and prior to May 1, 1994.

(2) **PROJECTS SUBJECT TO APPROVAL BY THE COMMISSION.** Except as provided under ss. CCC 1.04 and 1.05, no person may do any of the following without first obtaining the commission's approval of the action as a project:

(a) Obligate for a capital expenditure, by or on behalf of a hospital, that exceeds \$1,000,000.

(b) Implement any of the following services new to a hospital that exceed \$500,000 in annual net operating revenue:

1. Air transport services.
2. Burn care services.
3. Cardiac catheterization services.
4. Cardiac surgery services.
5. End-stage renal disease services.
6. Neonatal intensive care services.
7. Organ transplant services.
8. Radiation therapy services.

9. Any other implementation of a new service as provided under sub. (4).

(c) Obligate for an expenditure, by or on behalf of a hospital, independent practitioner, partnership, unincorporated medical group or service corporation for clinical medical equipment that exceeds \$500,000.

(d) Purchase or otherwise acquire a hospital.

(e) Construct or operate an ambulatory surgery center or a home health agency.

(3) **CLARIFICATION OF A HEALTH CARE PROJECT.** (a) No person may subdivide a proposed health care project listed under sub. (2) in order to avoid compliance with this chapter. Prohibited subdivisions include any of the following:

1. A health care project shall not be subdivided into parts which, when analyzed separately, are not subject to this section unless each part is a component of a health care project for which a legally enforceable contract, promise or agreement was established prior to July 1, 1993.

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2. A health care project shall not be split between 2 or more persons in order to avoid compliance with this section.

3. A health care project involving 2 or more pieces of clinical medical equipment shall not be subdivided into parts if that equipment can only perform its normal function when the components are used together.

(b) An expenditure for clinical medical equipment shall include all related costs of installation.

(c) Transactions separated by 5 years or less that are components of an overall plan for meeting patient care objectives are part of one project.

(d) An obligation is made and any other action is undertaken by or on behalf of a hospital, independent practitioner, partnership, unincorporated medical group or service corporation if any of the following conditions exist:

1. Any part, which equals or exceeds any threshold under sub. (2), of the cost associated with the obligation or other action is or can be chargeable to the hospital, independent practitioner, partnership, unincorporated medical group or service corporation.

2. It would transfer performance of health-related or ancillary services previously performed by the hospital to an affiliated corporation.

3. It would result in a service, program or facility owned or controlled by a hospital.

(e) Any person who proposes to obligate for an expenditure exceeding \$500,000 for clinical medical equipment to be located part-time or full-time in this state is presumed to do so on behalf of a hospital, independent practitioner, unincorporated medical group or service corporation.

(4) IMPLEMENTATION OF NEW SERVICES BY OR ON BEHALF OF A HOSPITAL. (a) *Addition of a new service or unit.* 1. A new service or unit is one that is expected to result in annual net operating revenues exceeding \$500,000.

2. A new service or unit is one which was not offered by or on behalf of the hospital prior to July 1, 1993.

3. The determination of whether annual net operating revenues will exceed \$500,000 shall be made by projecting total patient revenues anticipated for the service for any 12-month period for 3 years after completion of the addition of a health service or unit.

4. The addition of a new service or unit includes any of the following:

a. The establishment of a separate and distinct service or unit for patients formerly treated in other services or units.

b. Holding oneself out through acknowledgement, advertising or promotion as providing a new service or having a new unit.

c. Providing the service or establishing a unit to treat patients previously cared for through a formal contractual arrangement with another hospital or provider.

d. Providing care in a service or unit in which care had not been provided over the past 12 months.

(b) *Revenues generated by the service.* All revenues generated by the service or unit shall be attributed to the service or unit regardless of the cost center to which the facility assigns them.

(5) LEASING CLINICAL MEDICAL EQUIPMENT. For the purposes of this subsection, the value of a lease shall be determined by multiplying the original cost of the clinical medical equipment to the lessor by the percentage of total equipment usage being leased to the lessee.

(a) *Securing an original lease.* 1. A copy of the lease for each lessee, regardless of the value of the lease, shall accompany the application submitted by the lessor prior to making an obligation to purchase clinical medical equipment.

2. If the lessee is securing an original lease from a lessor with existing clinical medical equipment, an application from the lessee is required when the value of the lease exceeds \$500,000.

(b) *Renewing an existing lease or changing lessors.* 1. No application is required upon renewing an existing lease or changing lessors when the value of the new lease is the same as the existing lease.

2. An application is required from the lessee upon renewing an existing lease or changing lessors when the value of the existing lease is less than \$500,000 and the value of the new lease exceeds \$500,000.

3. No application is required upon renewing an existing lease or changing lessors when the value of the existing lease is greater than \$500,000.

(c) *Leases of out-of-state based equipment.* An application is required by the lessor when the accumulated value of individual leases on a piece of out-of-state based equipment exceeds \$500,000.

(6) ACQUISITIONS THROUGH DONATION OR LEASING. No person may acquire equipment or a facility by means of donation, lease or any other arrangement without first obtaining the commission's approval if the equipment or facility would have been subject to review under ch. 150, Stats., and this chapter if purchased at fair market value. The person acquiring the facility or equipment is responsible for satisfying the requirements of ch. 150, Stats., and this chapter.

(7) PROJECT INITIATED WITHOUT THE COMMISSION'S APPROVAL. (a) No person may recover through charges or rates any depreciation, interest or principal payments or any operating expenses associated with a project or part of a project subject to this chapter that does not have the commission's approval, including unapproved parts of a project which was subdivided as described in sub. (3).

(b) If a project with costs expected to fall below the dollar thresholds for reviewability subsequently incurs costs exceeding a dollar threshold, the person who operates the project shall submit an application to the commission prior to obligating any expenditure in excess of the threshold.

(c) If a project for new services with revenues expected to fall below the dollar thresholds for reviewability subsequently generates annual net operating revenues exceed-

ing the \$500,000 threshold, the person who operates the project shall submit an application to the commission within 30 calendar days of the date they know or should have known that the revenues generated exceeded the threshold.

(d) The provisions of pars. (b) and (c) apply to any project which exceeds a threshold within 3 years from the inception of the project.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.04 Exemptions from capital expenditure review.**

**(1) DEFINITIONS.** In this section:

(a) "Computer system" means an electronic information-collecting or processing system used for management or record-keeping purposes. "Computer system" does not include any system that is used as a component or accessory to clinical medical equipment.

(b) "Energy conservation" means efforts undertaken by a hospital which increase efficiency of energy usage to reduce overall energy consumption by the hospital.

(c) "Hospital gross annual patient revenue" means the sum of all charges billed by a hospital for all hospital inpatient and outpatient medical services.

(d) "Nonsurgical outpatient services" means all medical services provided on an outpatient basis by a hospital, excluding operative procedures, clinical medical equipment relating to the services, or any building or buildings that house the services.

**(2) EXEMPTION FOR PRIOR AGREEMENTS.** Approval by the commission is not required if a person has, prior to July 1, 1993, entered into a legally enforceable contract, promise or agreement with another to do any of the activities under s. CCC 1.03 (2) and met the requirements of s. 9125 (3) of 1991 Wis. Act 250. All legally enforceable contracts, promises or agreements under this exemption, with a project completion date of July 1, 1993 or later, shall be reduced to writing and made available for review by the commission at its request. A legal opinion stating that the contract or contracts are enforceable under law shall be filed with the commission by September 1, 1993. The commission shall presume that contracts, promises or agreements not supported by the legal opinion and filed by this date do not meet the requirements for an exemption. Home health agency applicants who have met the requirements of s. 9125 (3) of 1991 Wis. Act 250 and have filed an application for licensure with the bureau of quality compliance in the department of health and social services prior to July 1, 1993 are not required to submit a legal opinion under this subsection.

Note: The legal opinion should be submitted to the Cost Containment Commission, 202 State Street, Suite 203, Madison, WI 53703.

**(3) EXEMPTION FOR CERTAIN SYSTEMS.** (a) Except as provided in par. (c), a capital expenditure by or on behalf of a hospital is not subject to review under this chapter if the expenditure is for one or more of the following purposes:

1. A computer system.
2. An electrical system.
3. Energy conservation.

4. Heating, ventilation or air conditioning.
5. Nonsurgical outpatient services.
6. Telecommunications.

(b) A capital expenditure for one of the purposes listed under par. (a) may include incidental removal and restoration of building components, such as walls, ceilings and floors, necessary for achieving the purpose.

(c) A capital expenditure listed in par. (a) is subject to review if any of the following apply:

1. The capital expenditure would exceed 20% of the hospital's gross annual patient revenue for its last fiscal year.

2. The capital expenditure is for a related component of the project where the total capital expenditure for the project exceeds the applicable threshold.

3. The capital expenditure is divided into non-reviewable parts in violation of s. CCC 1.03 (3), and the total undivided capital expenditure requires review under subd. 1 or 2.

4. The capital expenditure is for clinical medical equipment, regardless of whether that equipment is used in whole or in part in connection with nonsurgical outpatient services.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.05 Innovative medical technology.** The commission may grant an exemption from this chapter to any person proposing to acquire innovative medical technology pursuant to s. 150.63, Stats. An application for an exemption shall be submitted pursuant to s. CCC 1.09. Health care project analysis and public hearing requirements under s. CCC 1.07 do not apply to reviews under this section.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.06 Determination of reviewability. (1) REQUEST FOR DETERMINATION.** (a) Any potential applicant may request that the commission make a determination concerning the reviewability of a project. The purpose of the request is to ascertain whether the project is reviewable under ch. 150, Stats.

Note: The request should be submitted to the Cost Containment Commission, 202 State Street, Suite 203, Madison, WI 53703.

(b) The request shall be in writing and shall include a brief description of the project, the estimated capital expenditure, the estimated annual net operating revenue to be generated by the proposed project, and the name of an authorized representative of the applicant.

(c) The commission may ask for additional information of the person submitting the request before issuing a determination. A request is not complete until the additional information is received by the commission.

**(2) ISSUANCE OF DETERMINATION.** (a) The commission shall issue a written determination of reviewability which states whether the project is reviewable under ch. 150, Stats., within 30 calendar days following receipt of a request for a determination unless the commission has requested information within 30 calendar days of receipt of the request for a determination or has notified the poten-

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tial applicant of a 30 calendar day extension. When additional information has been requested or an extension noticed, the determination shall be issued within 30 calendar days following the commission's receipt of additional information or 30 calendar days following the date of the extension. If the commission fails to issue a written determination within 30 calendar days, the project shall be considered nonreviewable.

(b) The commission's determination of reviewability is neither a declaratory ruling within the meaning of s. 227.41, Stats., nor a final decision within the meaning of s. 227.47, Stats. The determination of reviewability is binding upon the commission and the person submitting the request except for any of the following:

1. A determination is issued and the request is subsequently found to contain material errors of fact or omission.

2. Section CCC 1.09 (7) is applicable.

3. The potential applicant requests a declaratory ruling under sub. (3).

(3) **APPEAL.** The exclusive means of review of a determination under this section is by petition for declaratory ruling under s. 227.41, Stats. Notwithstanding s. 227.41 (1) and (4), Stats., the commission shall issue a declaratory ruling in response to each petition under this section.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

## Subchapter II —

### Notification, Hearing And Reporting Requirements

**CCC 1.07 Health care project analysis and public hearing. (1) REQUIREMENTS.** Before making a binding legal or financial obligation, a person who proposes to undertake a health care project under s. CCC 1.03 (2) that is not exempt under s. CCC 1.04 or 1.05 shall comply with all requirements of this section.

(2) **ELEMENTS OF A HEALTH CARE PROJECT ANALYSIS.** A person who proposes to undertake a health care project subject to public review under this chapter shall prepare a health care project analysis. The following information shall be included in the health care project analysis:

(a) The name, address, contact person and phone number of the person proposing the health care project and the date and place of the public hearing.

(b) A brief executive summary of the health care project not to exceed 5 pages, including all of the following information:

1. Type of health care project.
2. Location of the health care project.
3. Proposed market area.
4. Square feet involved, including new, renovated, modernized and demolished space, if applicable.
5. Impact on approved bed capacity, if applicable.
6. Total capital expenditures for the health care project.

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7. A brief summary of the purpose and need for the health care project, including the following:

a. Whom and how many persons it will serve.

b. The number of expected annual procedures, if applicable.

c. The availability and utilization, based on available information, of existing services, equipment or providers serving similar market areas.

(c) A brief description and fiscal analysis of the impact of the health care project on patient charges and health care costs at the site of the health care project, including any cost-savings attributable to the health care project.

(d) A brief description of the projected financing for the health care project, including source and terms of funds.

(e) Any other information related to the health care project that the person proposing the health care project wishes to discuss or highlight that may be of interest to the public.

(3) **SCHEDULING AND PUBLISHING NOTICE OF A PUBLIC HEARING.** (a) *Type of notice.* A person proposing to undertake a health care project subject to public review under this chapter shall schedule a public hearing and shall publish a class 1 notice of the public hearing in a newspaper specified in subds. 1 to 3 at least 30 calendar days prior to the public hearing date. Additional notices may be published at any time prior to the public hearing date in newspapers likely to give notice to the community in which the proposed health care project would be located or expected to serve. The public hearing notice shall appear in at least one of the following newspapers:

1. The official state newspaper under s. 985.04, Stats.

2. An official municipal newspaper if one exists under s. 985.05, Stats.

3. A newspaper likely to give notice in the market area where the health care project is located or is expected to serve, if the municipality does not have an official newspaper.

Note: The official state newspaper is the Milwaukee Sentinel.

(b) *Contents of notice.* The notice shall include at least the following elements:

1. A bold heading entitled, "NOTICE OF PUBLIC HEARING FOR (name of proposed health care project)" printed in capital letters of not less than 18 point type size. The text of the notice shall be printed in not less than 10 point type size.

2. The name, address and telephone number of the person proposing the health care project.

3. The date, time and place for the public hearing. The place for the hearing shall be accessible to persons with disabilities and shall be in the area of the state served by the proposed health care project.

4. A brief description of the proposed health care project.

5. A summary of the contents of the health care project analysis and a location where copies of the analysis may be reviewed.

(c) *Affidavit of publication.* The person proposing the health care project shall submit to the commission an affidavit of the publication annexed to a copy of the notice, clipped from the paper in which it was published, that specifies the date of insertion and the name of the newspaper. The affidavit shall be included as part of the application submitted under s. CCC 1.09 (3).

**(4) FILING AND DISTRIBUTING THE HEALTH CARE PROJECT ANALYSIS.** (a) Filing the health care project analysis. At least 30 calendar days prior to the public hearing date, the person proposing the health care project shall provide the commission with a copy of the health care project analysis and of the public notice required under subs. (2) and (3) and distribute copies to all persons described in par. (b). Submission of a copy to the commission satisfies the notification of intent requirements under s. CCC 1.09 (2).

(b) Distributing the health care project analysis. The person proposing the health care project shall distribute copies of each health care project analysis.

1. Copies shall be distributed to the following entities at least 30 calendar days prior to the public hearing date:

a. The county clerk of the county in which the person proposes to undertake the health care project.

b. The main public library, if any, of the city, village or town in which the proposed health care project will be undertaken.

2. Copies shall be distributed to any other person who requests a copy of the health care project analysis up to and including the public hearing date.

**(5) CONDUCTING THE PUBLIC HEARING.** (a) The hearing shall be on the completeness and accuracy of the health care project analysis, the expected impact of the proposed health care project on health care costs, the expected improvement, if any, in the local health care delivery system resulting from the health care project, and any other issue related to the proposed health care project.

(b) Representatives from the management staff, if any, of the person seeking to undertake the health care project and, if possible, at least 3 members of that person's governing board shall attend the public hearing to review public testimony.

(c) The person proposing the health care project shall designate a representative to preside at the hearing. The representative shall describe the purpose of the hearing by briefly outlining the proposed health care project in relation to par. (a).

(d) The person proposing the health care project shall record accurate minutes of the meeting and shall provide copies of the minutes and any written testimony presented at the hearing to the commission as part of the application process under s. CCC 1.09 (3). The minutes of the public hearing shall include all of the following:

1. A list of the persons who testified or submitted written testimony, their organizational affiliations and addresses.

2. A count of the total number of people who attended the hearing.

3. A summary of all testimony presented, whether oral or written.

4. A count of the total number of people from the public who testified.

5. A summary of responses made at the public hearing.

(e) The public hearing shall not be adjourned prior to the time specified in the public hearing notice. If no ending time was specified in the notice, the person proposing the health care project and the representative presiding at the public hearing shall adjourn the hearing at least one hour after the last person testified.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.08 Hospital capital budget reporting.** (1) **HOSPITAL REPORT.** Each hospital shall submit an initial 5-year capital budget report to the commission as required by s. 150.77, Stats., and annually thereafter. Reports shall be submitted in a format prescribed by the commission and may be updated at any time.

(2) **COMPLETION REQUIREMENTS.** No application for project approval from a hospital, except for an application for the purchase or other acquisition of another hospital, is complete under s. CCC 1.09 (3) (c) until the commission receives the required 5-year capital budget report from the applicant.

(3) **SIGNATORIES.** A hospital's capital budget report shall be signed by the person who supervised its preparation and by the chairperson or president of the hospital board of trustees.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

### Subchapter III —

#### Application Review and Hearing Process

**CCC 1.09 Review process.** (1) **PROCEDURES AND CRITERIA.** Projects shall be reviewed in accordance with the process established under ss. 150.63, 150.67 to 150.71, Stats., and this section, the review criteria in s. 150.69, Stats., and s. CCC 1.14, and the applicable service-specific criteria in ss. CCC 1.15 to 1.17.

(2) **NOTIFICATION OF INTENT.** (a) Any person intending to submit an application for approval of a project shall submit a notice of intent to the commission in a format prescribed by the commission prior to the submission of the application.

(b) The notification of intent shall include the name and address of the applicant, the anticipated date for the obligation or initiation of the project, the estimated cost of the project and a brief narrative describing the scope and purpose of the project.

(c) There shall be a 30-day waiting period between the submission of the notice of intent and the public hearing conducted under s. CCC 1.07 (3).

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(d) Filing a copy of the health care project analysis and public notice with the commission under s. CCC 1.07 (4) satisfies the requirements of this subsection.

(3) **SUBMISSION OF AN APPLICATION.** (a) Applications shall be submitted to the commission in a format prescribed by the commission within 10 calendar days after the date of the public hearing under s. CCC 1.07. Additional questions may be included as the commission determines necessary for the review of an application. The application materials shall be sent to the applicant by the commission within 10 working days after receipt of the health care project analysis and public notice. Applications may also be sent to other persons proposing an activity subject to this chapter upon direct request from those persons.

Note: Application materials may be obtained from the Cost Containment Commission, 202 State Street, Suite 203, Madison, WI 53703.

(b) *Waiting period.* The commission shall not accept an application until the public hearing held under s. CCC 1.07 (5) has occurred.

(c) *Review for completeness.* On receipt of an application, the commission shall review the application for completeness. An application may not be considered complete unless the following conditions are met:

1. The application materials and any additional questions are completed to the satisfaction of the commission. Additional questions may be asked or additional information sought of the applicant prior to a determination of completeness.

2. A copy of the health care project analysis and public notice prepared under s. CCC 1.07 (2) and (3) and a copy of the public hearing minutes prepared under s. CCC 1.07 (5) (d) have been submitted to the commission.

3. The commission has on file a current capital budget report which includes the project and meets the reporting requirements of s. CCC 1.08.

4. An application fee has been submitted as required under s. CCC 1.13.

(d) *Notice of incompleteness.* If the commission determines that any applicable item on the application materials or additional question has not been adequately answered, the application is incomplete. Within 15 calendar days of receipt of all application materials, the commission shall mail to the applicant a notice of incomplete application. The notice shall state which items were determined incomplete and the basis for that determination. If the commission fails to give this notice, the application shall be deemed complete as of the date the commission received the last application materials.

(e) *Expiration of application.* Any application expires unless the commission declares it complete within one year after the date the applicant notifies the commission of its intent to undertake the project under s. CCC 1.07 (4).

(4) **COMPLETE APPLICATION NOTIFICATION.** On or before the 20th day of the month following the receipt of a complete application, the commission shall send a notice of receipt of a complete application to the applicant and publish the notice in a daily newspaper of general circulation

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that serves the area where the proposed project would be located.

(5) **PUBLIC MEETING** (a) At the request of any affected party or at the discretion of the commission, a public meeting shall be conducted by the commission at which all affected parties may present testimony regarding the review of projects seeking approval.

1. A public meeting request shall be in writing and received by the commission no later than 10 working days from the date of notification under sub. (4) or under sub. (9) for concurrent reviews.

2. A commission determination to conduct a public meeting must be made no later than 15 working days from the date of notification under sub. (4) or under sub. (9) for concurrent reviews.

3. A public meeting shall be conducted by the commission for any application submitted for an exemption under s. CCC 1.05.

(b) Any affected party presenting testimony regarding the review of a project seeking approval shall state any organizational affiliation and shall register in support of the project, in opposition to the project, in support of the project with modifications, or as presenting information which is neither in support of or in opposition to the project.

(c) The record of the public meeting shall include all of the following:

1. A list of persons, their organizational affiliations, and how they registered under par. (b).

2. A verbatim recording of the meeting.

(6) **COMMISSION REVIEW.** (a) Commission review of an application shall begin on the date of notification of a complete application under sub. (4) or under sub. (9) for concurrent reviews. Reviews shall be completed within 75 calendar days, unless all applicants consent to an extension or the commission determines to extend the review cycle by 60 days for concurrent reviews.

(b) The commission shall issue an initial finding to the applicant within the review period specified in par. (a). If the initial finding is for denial of the application, it must identify the criteria on which the denial is based. Unless the applicant requests a hearing under s. CCC 1.10 within 10 calendar days following the commission's issuance of the initial finding, the commission's initial finding is its final action. Upon request of an applicant for good cause shown, the commission may agree to issue its recommendation and initial finding within a stated period of time less than the deadlines specified in par. (a).

(7) **DETERMINATION OF REVIEWABILITY.** If, during the review process, the commission finds that a project previously thought to be or determined to be reviewable is not in fact reviewable, the commission shall notify the applicant in writing.

(8) **CONDITION OF APPROVAL.** The commission and applicant may agree to any modification of the project and special conditions as part of the approval.



**(9) CONCURRENT REVIEW.** (a) Pursuant to s. 150.67 (2), Stats., the commission may group reasonably related applications for concurrent review. The review procedures set forth under subs. (1) to (8) shall apply in reviewing all applications except as modified by this subsection in the review of applications for concurrent review. The commission may initiate concurrent review as follows:

1. 'Fixed application review.' a. The commission may establish predetermined periods for conducting concurrent reviews by posting a public notice in the official state paper indicating the period of concurrent review, the geographic area or areas under consideration, the types of projects to be reviewed, the time period for submission of project applications and a statement that applications shall not be accepted after the close of the application deadline. The commission may include any pending application in its possession that meets the notice conditions as part of the concurrent review.

b. The commission shall notify all applicants who are included as part of the concurrent review. A listing of all applications being reviewed shall also be shared with each applicant.

c. Applications received prior to the application deadline may not be declared complete until after the deadline. If the commission determines within 15 calendar days after the application deadline that any applicable item on the application form or any additional question has not been adequately answered, the application is incomplete. The commission shall mail to the applicant a notice of incomplete application. The notice shall state which items were determined incomplete and the basis for that determination. If the commission fails to give this notice, the application shall be deemed complete as of the application deadline date.

d. Any application not declared complete within 45 calendar days after the application deadline shall be disqualified from further review.

e. On or before the 45th calendar day following the application deadline, the commission shall send a notice of receipt of a complete application to the applicants and publish a notice in a daily newspaper of general circulation that serves the areas where the proposed projects would be located.

2. 'Variable application review; scheduled.' a. The commission may initiate concurrent review upon receipt of any notice of intent under s. CCC 1.07 (4), by sending to the person who submitted the notice of intent a notice of concurrent review and publishing and distributing the concurrent review notice as the commission deems fit. The notice of concurrent review shall include the name of the person who submitted the notice of intent, the type of facility or service being concurrently reviewed, the area of concurrent review, the time period for submission of project applications and a statement that applications shall not be accepted after the close of the application deadline.

b. The commission shall notify all applicants who are included as part of the concurrent review. A listing of all applications being reviewed shall also be shared with each applicant.

c. Applications received prior to the application deadline may not be declared complete until after the deadline. If the commission determines within 15 calendar days after the application deadline that any applicable item on the application form or any additional question has not been adequately answered, the application is incomplete. The commission shall mail to the applicant a notice of incomplete application. The notice shall state which items were determined incomplete and the basis for that determination. If the commission fails to give this notice, the application shall be deemed complete as of the application deadline date.

d. Any application not declared complete within 45 calendar days after the application deadline shall be disqualified from further review.

e. On or before the 45th calendar day following application deadline, the commission shall send a notice of receipt of a complete application to the applicants and publish a notice in a daily newspaper of general circulation that serves the areas where the proposed projects would be located.

3. 'Variable application review; unscheduled.' The commission may concurrently review applications which are declared complete within the same calendar month, regardless of when the notices of intent were received. Concurrent review under this paragraph shall be initiated by including a notice to that effect in the notice under sub. (4).

(b) The commission shall base concurrent review on a comparative analysis of the applications under all applicable review criteria set forth in this chapter. When multiple applications are being reviewed, the commission shall rank the applications according to how each meets applicable review criteria. The commission may assign individual weights to each criteria for this ranking process.

1. In addition to other criteria set forth in this chapter, the commission may use the following preferences to rank applications during concurrent review for the following factors:

a. Applicants with the highest percentage of their non-medical assistance and non-medicare patients enrolled in capitation insurance plans or contracts with group purchasers of medical services shall be ranked highest for this factor.

b. Applicants who have taken steps to ensure that incentives for induced demand caused by self-referrals are minimized shall be ranked higher for this factor.

c. Applications for shared services or equipment, whose ownership or management is shared between providers, shall be ranked higher than applications for non-shared services or equipment for this factor.

d. When applicants are part of a corporation that owns, controls or is affiliated with 2 or more hospitals, preference shall be given to those that implement the most effective system-wide plan for minimum duplication of services and equipment for this factor.

e. Applicants with a smaller index value on the hospital cost index shall be ranked highest for this factor. When applications being ranked are all within a single analysis area, the index value shall be based on analysis area aver-

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ages. When applications being ranked are from multiple analysis areas, the index value shall be based on statewide averages.

(c) The initial finding pursuant to concurrent review may take any of the following forms:

1. The approval of a single project.
2. The approval of more than one project.
3. The approval of parts of any project, if agreed to by the applicant.
4. The approval of any combination of projects or parts of projects if agreed upon by the applicants.
5. The approval of no projects.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.10 Hearing process. (1) RIGHT TO A HEARING.** An applicant whose project is rejected may request a public hearing to review the commission's initial finding or may ask for a contested case hearing.

**(2) REQUEST FOR A HEARING.** (a) An applicant desiring either a public hearing or a contested case hearing shall submit a written request, no later than 10 calendar days after the issuance of the initial finding, to the commission. The request shall identify whether the hearing requested is a public hearing or a contested case hearing.

Note: The request for a hearing shall be submitted to the Cost Containment Commission at 202 State Street, Suite 203, Madison, WI 53703.

(b) The applicant requesting the hearing shall identify the criteria at issue no later than 20 calendar days after the issuance of the initial finding.

(c) An applicant may select only one type of hearing for the duration of the hearing process. Multiple hearing requests based on an initial finding resulting from a concurrent review shall be adjudicated within one hearing. If more than one party which has undergone concurrent review requests a hearing and the parties are not in agreement on the type of hearing, a contested case hearing shall be held.

**(3) DESIGNATION OF HEARING EXAMINER.** A hearing examiner shall conduct the hearing. The hearing examiner may be a member of the commission or a designee of the commission. The hearing examiner need not be an attorney.

**(4) SERVICE AND FILING OF DOCUMENTS.** (a) *By the hearing examiner.* The hearing examiner may serve decisions, orders, notices and other documents on the parties by first class, certified, registered or inter-departmental mail or by facsimile transmission.

(b) *By a party.* 1. Materials filed by a party with the hearing examiner may be served personally or by first class, certified or registered mail, interdepartmental mail or by facsimile transmission. All correspondence, papers or other materials submitted by a party shall be served on the same date by that party to all other parties to the proceeding. No affidavit of mailing, certification, or admission of service need be filed with the hearing examiner.

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2. Materials mailed or faxed to the hearing examiner shall be considered filed with the hearing examiner on the date of receipt.

Note: The mailing address is Cost Containment Commission, 202 State Street, Suite 203, Madison, WI 53703. The facsimile transmission number of the commission is (608) 264-9869.

**(5) NOTICE OF HEARINGS.** (a) The notice of hearing shall be in writing, with a title identifying the matter to be set for hearing and the docket number.

(b) The notice of hearing shall contain the following information:

1. The date, time and location of the hearing.
2. The statutory authority for the hearing.
3. A short summary of the matter to be considered.
4. Such other information as the hearing examiner may deem appropriate.

**(6) CHANGES IN TIME OR PLACE OF HEARING, ADJOURNMENTS, FAILURES TO APPEAR.** (a) *Changes.* Requests for changes in the time and place of a scheduled hearing will be granted only for good cause. A request received after any required newspaper publication or legal notice will be rescheduled only if the person requesting the change reimburses the cost to the commission and the hearing examiner deems such a change appropriate under the circumstances presented.

(b) *Adjournment.* The hearing examiner may adjourn a hearing for good cause and the hearing shall be reset or reconvened at his or her discretion.

(c) *Failure to appear.* 1. If an applicant for an approval fails to appear at a hearing following due notice, the hearing examiner may dismiss the application unless the applicant shows good cause for the failure to appear.

2. If a respondent in any other proceeding fails to appear, the hearing examiner may take testimony and issue, modify or rescind the order as may be appropriate, unless good cause is shown for the failure to appear.

3. If a petitioner or appellant in a proceeding fails to appear, the hearing examiner may dismiss the petition unless the petitioner or appellant shows good cause for the failure to appear.

**(7) WITNESSES AND SUBPOENAS.** The hearing examiner may issue subpoenas to compel the attendance of witnesses at hearings or discovery proceedings under this section. Sections 814.67, 885.06 and 885.07, Stats., shall govern the payment of witness fees and expenses.

**(8) CONFERENCES.** (a) *Call and purpose.* The hearing examiner may call a conference at any time prior to or during the course of a hearing, and may require the attendance of all persons who are or wish to be certified as parties to the proceeding. The purpose of the conferences shall be to consider the following:

1. Clarification of issues.
2. Amendments to the pleadings.
3. Admissibility of evidence.

4. The possibility of obtaining admissions or stipulations of fact and of documents which will avoid unnecessary proof.

5. The limitation of the number of witnesses.

6. The identification of all parties to the proceedings.

7. Other matters as may aid in the disposition of the matter.

(b) *Recording stipulations.* The hearing examiner may record any stipulation made at a conference. Stipulations or other agreements made at a conference shall bind the parties in the subsequent course of the proceeding.

(c) *Decision on briefs for a contested case hearing.* If a prehearing conference is held for a contested case hearing and the parties agree that there is no material dispute of fact raised by the pleadings, the hearing examiner may cancel the hearing and may decide the matter on the basis of briefs or stipulations submitted by the parties.

(9) **TRANSCRIPTS.** (a) *Methods and copies.* Hearings shall be recorded either stenographically or electronically. A typed transcript shall be made when it is determined that one is necessary by the hearing examiner. If a transcript is made by the commission, copies shall be furnished to all persons upon request and prepayment of a reasonable fee, as determined by the commission. If no transcript is deemed necessary by the commission and a party requests that one be prepared, that party shall be responsible for costs of transcript preparation. If several parties request transcripts, the commission may divide the costs of transcription equally among the parties. In lieu of a transcript the commission may provide any person requesting a transcript with a copy of the tape recording of the hearing upon payment of a reasonable fee. All requests for transcription shall be made at the hearing or in writing and sent to the commission or the hearing examiner who presided at the hearing.

(b) *Corrections.* Any party, within 14 calendar days of mailing the transcript, may file with the hearing examiner a notice in writing of any claimed error, and shall mail a copy of the notice to each party of record. Other parties may contest any claimed error within 20 calendar days of the date of the mailing of the transcript by notifying the hearing examiner and other parties of record. All parties shall be advised by the hearing examiner of any authorized corrections to the record.

(10) **PUBLIC HEARING.** (a) Within 30 calendar days after the receipt of the request for a public hearing or of the last request in the event of a concurrent review, a public hearing shall be held in an area determined by the hearing examiner. The commission shall publish a notice of the public hearing in the official state newspaper or in a daily newspaper of general circulation in the area of the project at least 5 calendar days before the hearing.

(b) The following shall be the order of business at the hearing except as modified by the hearing examiner:

1. The hearing shall commence with the hearing examiner introducing the following items into the record:

a. The application, supporting documents which were submitted with the application, and additional information submitted in response to the commission's request.

b. The staff analysis, initial finding and supporting documents relied upon in making the initial finding.

c. The record of the public meeting, if any, under s. 150.71 (1), Stats., and s. CCC 1.09 (5).

2. The hearing examiner shall enumerate the issues upon which the hearing shall focus.

3. The applicant may make an opening statement.

4. Members of the public may comment orally or in writing. Persons desiring to comment orally, whether on their own behalf or as an authorized agent or attorney, shall enter an appearance in person by giving their name and address, the name and address of the party being represented, and the capacity in which they are representing the party. Evidence or testimony that is determined by the hearing examiner to be irrelevant or unduly repetitious shall be excluded.

5. The hearing examiner may set time limits for presentations.

6. The commission shall state its position.

7. The hearing examiner may ask questions of persons who make oral presentations.

8. At the conclusion of the taking of evidence, any party shall be given, upon request, a reasonable period of time for oral argument. Parties to the proceeding may submit questions to the hearing examiner to be asked at the discretion of the hearing examiner of individuals making oral presentations.

(c) The hearing examiner shall make a tape recording of the hearing, including the testimony of all witnesses and oral argument. Copies of the tape recording shall be made available to any party, at cost, upon reasonable notice.

(d) The hearing examiner may leave the record open for 10 calendar days for the submission of written responses to the testimony. After the record is closed, the hearing examiner may allow up to 20 calendar days for the submission by the parties of written briefs. Each party filing a brief shall serve the brief upon the other parties and the hearing examiner.

(e) The hearing examiner shall prepare and serve findings of fact, conclusions of law and a proposed decision on each of the parties. The service of the decision shall constitute the conclusion of the hearing.

(f) The final decision shall be made in accordance with sub. (12).

(11) **CONTESTED CASE HEARING.** (a) *Start of hearing process.* The hearing process shall commence for a contested case hearing within 30 calendar days after receiving a request or the last request in the event of a concurrent review, unless all parties to the hearing consent to an extension of this period. The hearing process shall begin upon appearance of the parties before the hearing examiner as part of a prehearing conference.

(b) *Applications undergoing concurrent review.* All applications undergoing concurrent review shall be considered at one hearing.

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(c) *Location.* All contested case hearings and prehearing conferences shall be held as determined by the hearing examiner.

(d) *Legal issues.* A contested case hearing under this subsection shall consist of a review of the commission's initial finding to approve or reject the project. The only issues in the hearing are whether the commission's initial finding was one of the following:

1. Contrary to the weight of the evidence on the record when considered as a whole.
2. Arbitrary and capricious.
3. Contrary to law.

(e) *Prehearing conference.* 1. At least 14 calendar days prior to the contested case hearing, a prehearing conference shall be held. The prehearing conference shall be conducted consistent with sub. (8).

2. The hearing examiner may issue any of the following prehearing orders:

- a. Directing the order of presentation.
- b. Limiting evidence and number of witnesses.
- c. Requiring that evidence be presented in written form and exchanged among parties prior to the hearing.
- d. Determining whether a party as defined under s. 227.01 (8), Stats., has standing to participate in the hearing.

3. The hearing examiner shall prepare a memorandum summarizing the action taken at the conference.

(f) *Procedures for conducting the hearing.* 1. The hearing examiner shall open the hearing and make a concise statement of its scope and purpose. Issues raised at the hearing shall be limited to the review criteria cited as grounds for disapproval in the initial finding. Criteria not identified in the initial finding are deemed met or not applicable. Evidence may be received which relates to noncontested criteria only to the extent the evidence is relevant to contested criteria.

2. When opening statements are made they shall be limited to a brief summary or outline in clear and concise form of the evidence intended to be offered, and a statement of ultimate legal points relied upon.

3. Except as provided in subd. 5, evidence admitted at the hearing shall be limited to the following:

- a. The application, supporting documents which were submitted with the application, and additional information submitted in response to the commission's requests.
- b. The staff analysis, initial finding and supporting documents relied upon in making the initial finding.
- c. The record of the public meeting, if any, under s. 150.71 (1), Stats., and s. CCC 1.09 (5) and supporting documents relied upon in making the initial finding.
- d. Cross-examination of persons preparing or making statements contained in the documents under subpars. a to c.

4. Additional testimony to assist the commission in interpreting the portions of the application supporting the denied criteria shall be allowed. The testimony shall not be allowed to supplement the record upon which the initial finding is based.

5. Parties may be allowed to present additional evidence only to the extent that the additional evidence is directly responsive to and made necessary by the evidence presented by any other party to the proceedings.

6. Persons preparing or making statements contained in the application, staff analysis, initial finding, or supporting documents shall be available for cross-examination, unless cross-examination is waived by opposing parties, and may give rebuttal testimony. Witnesses giving direct oral testimony shall be subject to cross-examination in the same manner as other witnesses.

7. Any party to the proceeding may be represented by counsel and present evidence and conduct cross-examination subject to the provisions of subd. 3.

8. The hearing examiner conducting the hearing may question all witnesses and take administrative notice of all judicially cognizable facts.

9. Evidence shall be duly offered and made part of the case record.

10. Any party adversely affected by a ruling may make an offer of proof which shall be made part of the record.

11. An applicant whose project is rejected has the burden of going forward with the evidence.

12. Proceedings may be conducted off the record only when the hearing examiner permits. If a discussion off the record is deemed pertinent by the hearing examiner, he or she may summarize it on the record.

13. Any argument before the hearing examiner on objections to receipt of evidence or on motions to strike shall be recorded and parties will be afforded the opportunity to make an offer of proof. An offer of proof shall be in the form directed by the hearing examiner.

14. Contemptuous conduct at a hearing shall be grounds for exclusion from the hearing.

(g) *Hearing examiner duties.* The hearing examiner shall perform the following duties:

1. Make all rulings as to evidence, testimony and official notice.
2. Set the order for examination and cross-examination of witnesses.
3. Administer oaths and affirmations.
4. Prepare written and oral summaries of cases heard.
5. Prepare a recommendation for the commission, consisting of findings of fact, conclusions of law and a recommended course of action.
6. Adjourn the hearing to a specific time, date and place.

(h) *Posthearing oral arguments and briefs.* 1. Following presentation of the testimony, posthearing briefs may be

filed by the applicant, the commission and any interested party. Parties submitting briefs shall file copies within a reasonable time specified by the hearing examiner.

2. The hearing examiner may permit oral arguments in lieu of posthearing briefs. All oral arguments shall be recorded. Any party that wishes to file a written brief shall be permitted to do so.

(i) *Close of hearing.* A hearing is closed when the evidentiary record is closed and any period established by the hearing examiner for filing of briefs has expired. If the time for filing briefs has expired and the brief of one or more parties is not filed within that time, the commission may proceed to its final decision.

(j) *Ex parte communication.* The ex parte communication restrictions set forth in s. 227.50, Stats., including s. 227.50 (1) (d), Stats., shall apply to projects for which a contested case hearing has been requested.

(k) *Proposed decision.* Unless designated by the commission as the final decision-maker, the hearing examiner shall issue a proposed decision containing findings of fact, conclusions of law, and a recommendation for action to be taken. A copy of the proposed decision shall be served on each party.

(12) **FINAL DECISION.** (a) In any hearing under this section, the hearing examiner shall establish a comment period during which the parties may submit comments pertaining to the proposed decision. At the close of the comment period, the parties' submissions shall be forwarded to the commission along with the proposed decision. The final decision shall then be made by the commission.

(b) A final decision may be issued to either approve or deny the application or to approve the application with conditions pursuant to s. CCC 1.09 (8). If the record is deemed incomplete on any issue identified in the initial finding, the case may be remanded to the hearing examiner for the taking of further testimony.

(c) The commission may ask all parties to the proceedings to present oral arguments before it makes a final decision.

(d) In a contested case hearing, the hearing examiner shall prepare a list of persons who are certified as parties and set forth the list in the proposed decision. For purposes of certifying parties under this section, the hearing examiner shall consider the following:

1. The nature of the agency proceeding.
2. The persons on whom the commission will have an effect and the amount of impact.
3. The nature of the participation by those involved in the proceeding, including attendance at hearings, cross-examination of witnesses, and submission of briefs.

(e) Every decision when signed shall be served upon each party to the proceeding or upon the party's attorney of record.

(13) **BURDEN OF PROOF.** Each applicant at any hearing under this section has the burden of proving, by clear and convincing evidence, that the commission's initial finding was contrary to the weight of evidence on the record when

considered as a whole, arbitrary and capricious, or contrary to law.

(14) **REHEARING.** (a) A petition for rehearing of a public hearing or a contested case hearing shall meet the requirements set forth under s. 227.49, Stats. The commission shall review a petition for rehearing as provided in s. 227.49, Stats.

(b) A petition for rehearing under this subsection shall set forth the particular grounds for the relief sought. Copies of the petition shall be served on all parties of record.

(15) **REQUIREMENTS FOR JUDICIAL REVIEW.** Petitions for judicial review shall be filed pursuant to s. 227.52, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

#### Subchapter IV — Application Fees, Project Approval, Validity And Required Reports

**CCC 1.11 Content and validity of an approval.** (1) **CONTENT OF AN APPROVAL.** (a) Each approval shall include the proposed timetable for implementing and completing the project and, for the 3-year period following completion of the project, the project's depreciation and interest schedule, staff required for the project, the proposed per diem rate or outpatient charges needed to pay capital costs and the proposed per diem rate or outpatient charges needed to pay operating costs.

(b) The commission shall specify the maximum expenditure that may be obligated for a project.

(2) **PERIOD OF VALIDITY.** (a) An approval granted under this chapter is valid for one year from the date of issuance unless extended under par. (b).

(b) At the request of the approval holder, the commission may grant one 6-month extension of the period during which a project is valid due to circumstances beyond the approval holder's control which have prohibited undertaking the project within the first 12 months.

(3) **INVALIDITY.** (a) The commission may declare an approval invalid if either of the following occur:

1. At the end of the period of validity under sub. (2), the capital expenditure specified in the approval has not been obligated, financing sufficient to complete the project has not been obtained, or substantial and continuing progress has not been made.

2. The person granted the approval under this chapter substantially fails to comply with any term or condition set forth in the approval.

(b) The applicant has a right to a hearing under s. 227.42, Stats., to review an invalidation under this subsection.

(4) **TRANSFERABILITY OF APPROVAL.** No person may transfer to another person an approval granted under this chapter without approval of the commission.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.12 Progress reports and cost overruns.** (1) **PROGRESS REPORTS.** Each approval holder shall submit, in a format prescribed by the commission, regular progress re-

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ports giving the status of the project as of the date of the report.

(2) **SCHEDULE FOR SUBMITTING PROGRESS REPORTS.** The approval holder shall send progress reports to the commission according to the following schedule:

(a) For projects involving construction.

1. At the completion of design development drawings.
2. At the start of construction.
3. At 6-month intervals throughout the construction period.

4. At project completion.

(b) For projects that do not involve construction.

1. Within 60 calendar days of approval.
2. At 6-month intervals throughout project implementation.
3. At project completion.

(3) **REVIEW OF PROGRESS REPORTS.** The commission shall review each progress report within 5 working days of receipt. If the progress report indicates a projected cost overrun or material change in project scope, the commission shall inform the approval holder if submission of an additional application is required. If the project can be accomplished for an amount less than that approved, the commission shall adjust the approval accordingly when the project is completed.

(4) **COST OVERRUNS.** (a) All cost overruns are subject to approval of the commission.

(b) An approval holder shall report a projected cost overrun to the commission before an obligation for the overrun is made.

(c) The commission shall not approve a cost overrun in excess of 5% of the approved project cost if the approval holder incurs an obligation for the overrun prior to reporting it. The commission may disapprove a cost overrun if an approval holder fails to submit the required information according to the schedule in sub. (2).

(5) **REVIEW OF COST OVERRUN APPLICATION.** (a) An application to incur a cost overrun shall be submitted to the commission and reviewed in the following manner:

1. The approval holder shall submit another application for review pursuant to s. CCC 1.09. Health care project analysis and public hearing requirements under s. CCC 1.07 do not apply to reviews under this subsection.
2. Review of the application shall be limited to questions regarding changes in the approved project.
3. In determining maximum allowable inflation rates, the commission shall make use of standard construction indices.

(b) The original approval is not affected by the submission of an application for a cost overrun. If the commission approves the overrun, the original approval shall be

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amended accordingly. If the commission does not approve the overrun, the original approval shall be unchanged.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.13 Application fees.** (1) **ORIGINAL PROJECT.** Any person applying under this chapter shall pay an application fee equal to 0.37% of the estimated project cost, but not less than \$1,850 and not more than \$37,000. No application is complete without payment of the correct fee.

(2) **COST OVERRUNS.** (a) Each application submitted because of a cost overrun shall pay a new application fee equal to 0.37% of the overrun, but not less than \$1850 and not more than \$37,000.

(b) Project applicants may request a reduction in fees for all or part of a cost overrun if able to document that the costs were unforeseeable and resulted from circumstances beyond the control of the applicant. The commission shall determine an appropriate fee in response to such a request.

(3) **FEE REFUND.** The commission shall refund the application fee for an original project if a request to withdraw an application is made within 10 working days after receipt of the application. The application fee shall not be refunded after the application is declared complete. Application fees submitted for cost overruns are non-refundable. Fees may be refunded only as provided in this paragraph.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

### Subchapter V — Project Review Criteria

**CCC 1.14 General review criteria.** The commission shall use the criteria in this section for review of all applications. The commission may assign individual weights to each criterion during concurrent review, may provide special consideration for projects serving a health professional shortage area and may make adjustments necessary in an emergency situation that threatens patient safety. General review criteria include all of the following:

(1) **CONSISTENCY WITH STATE HEALTH SERVICES PLAN.** Projects shall be consistent with the state health services plan, adopted under s. 150.82, Stats., which is in effect on the date a completed application has been received. This criterion does not apply until a state health services plan or its applicable parts has been adopted by the commission.

(2) **NEED FOR THE PROJECT.** The commission shall not approve a project unless there is need for the project. Need may be demonstrated by any of the following:

(a) *Sufficient market share.* The project is in a market area containing sufficiently large current and future market share population to justify the project.

(b) *Utilization.* 1. Need estimates for services and equipment shall be based on utilization over the past 3 years for existing services and equipment, and a 3-year future utilization projection for existing or new services and equipment. The estimates shall be based on a statistically valid methodology acceptable to the commission.

2. Utilization projections shall be based solely upon the projected market share population in the project's market area. These forecasts shall take into consideration applicable statistics, by service, on admissions or discharges, average length of stay, number of procedures performed, patient days, number of beds, and average occupancy emergency room visits and outpatient visits.

(c) *Replacement rationale.* 1. If equipment or a facility is being replaced, the age of the equipment or facility shall be at least equal to its estimated useful life unless the applicant demonstrates any of the following:

- a. Failure to replace is not cost-effective.
- b. The facility or equipment is not operational.
- c. The equipment or facility is technologically obsolete.
- d. The equipment or facility is part of a larger project.

(d) *Recommendation of purchasing organizations.* 1. The recommendations of purchasing organizations that purchase health care services for their members directly from the applicant support the project. Recommendations from purchasing organizations representing prospective clients may also be considered.

2. The applicant shall provide the commission with the name, address and the percent of total clients represented by each purchasing organization. If the purchasing organization is affiliated with or has an ownership relationship with the applicant, the relationship shall be disclosed. The applicant may provide letters of recommendation from each purchasing organization. The commission may request a separate recommendation from any purchasing organization.

3. The letters of recommendation, whether favorable or unfavorable, shall be weighted by the percent of clients represented by the purchasing organization.

(e) *Underserved populations.* The project improves primary or emergency services, or both, to a health professional shortage area or areas.

(f) *Health networking.* The applicant provides evidence of cooperation with, and support from, local health planning agencies, providers and service organizations.

(3) **EFFICIENT AND ECONOMICAL USE OF RESOURCES.** (a) The commission shall not approve a project unless the project will efficiently and economically use resources. Efficient and economical use of resources may be demonstrated by any of the following:

1. The project's approach to providing services is more cost-effective than any alternative approach to providing like services.

2. The applicant promotes agreements for shared services.

(b) No building space may be created as part of the project unless it will be used within one year of completion of the project or it is part of a bigger phased-in project under review.

(4) **SUFFICIENT CASH FLOW AND RESERVES.** (a) *Requirement.* The commission shall not approve a project unless the applicant has sufficient cash flow, cash reserves and borrowed funds to pay total project costs.

(b) *Total project costs.* Total project costs shall include all of the following:

1. Physical asset costs including, but not limited to, site acquisition and preparation, soil tests, construction, building or structure or office space acquisition, renovation, fixed equipment and major moveable equipment.

2. Total costs of professional services including, but not limited to, planning, consultant, architectural, cost estimation, legal, managerial and feasibility study fees.

3. Financing costs including, but not limited to, financial advisory fees, fund raising expenses, and lender or investment banker fees and interest.

4. Start-up costs including, but not limited to, staff recruitment and deficit operation until expected revenue is realized.

5. Contingencies including, but not limited to, costs for unforeseen expenses and inflation.

(c) *Cost statement.* The application shall contain a complete statement of all capital and operating costs for the 2-year period beginning with the completion of the project. The statement shall distinguish increases in costs as a result of the project from increases attributable to other causes and explain all increases. The assumptions behind future cost and revenue projections shall be reasonable. Utilization projections contained in the need section of the application shall be comparable to those used in financial projections. The applicant shall include an estimate of how much of the project's cost will be billed to all patients and how much of the project's cost will be billed only to patients who directly benefit from the project.

(d) *Revenue sources.* The applicant shall specify the revenue sources to be used to finance capital costs. These projected revenues shall be sufficient to cover debt service requirements.

(e) *Ability to pay capital cost.* If using borrowed funds, the applicant shall provide a commitment letter from a qualified lender.

(5) **REASONABLE COST AND RATE INCREASES.** (a) *Cost comparisons.* The commission shall not approve a project unless the applicant's cost increases and projected rate increase requests are reasonable. To demonstrate that increases in rates, charges, and operating and capital costs are reasonable, the applicant shall establish all of the following:

1. That projected capital and operating costs are reasonable when compared to costs for projects of a similar kind and scope. The commission shall consider factors such as the relative age of services the project is to be compared with, differences in wage rates and the utilization that similar services are generating.

2. That the increased level of proposed charges or rates brought about by the project is reasonable when compared to those in other institutions offering services of a similar kind or scope. The commission shall consider factors such as the relative age of services the project is to be compared with, differences in wage rate and the utilization that similar services are generating.

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(b) *Incremental operating costs.* For proposed capital projects which exceed the lower of \$3,000,000 or 20% of a hospital's gross revenues, incremental operating costs exceeding 30% of the proposed capital expenditure in any one year for the first 5 years following completion of the project shall be justified. Incremental operating costs shall be adjusted for inflation pursuant to s. CCC 1.12 (5) (a) 3. In this paragraph, "incremental operating costs" means operating costs over and above those which would have been incurred by the applicant had the project not been implemented.

(6) **AVAILABILITY OF FINANCING AT MARKET RATES.** The commission may only approve a project for which financing is available at market rates. The commission shall make this determination on the basis of information supplied by the applicant.

(a) The applicant shall state the most likely source of funds, the interest rate and cost of borrowing including interest, pay periods, restrictions on additional debt, prepayment, annual debt service requirements and the total number of years of the loan.

(b) The applicant shall demonstrate that it has considered alternative sources of funding before obtaining financing and that the total cost of financing does not exceed market rates. The least costly debt funding for the project is presumed to be at market rates.

(c) The applicant shall establish that the debt, which includes interest, capitalized interest and debt principal repayment, will only be incurred consistent with prudent fiscal management.

(7) **AVAILABILITY AND EFFECTIVE USE OF PERSONNEL.** The commission may not approve a project if health care personnel are not available or effectively used. The application shall include a list of job titles and qualifications for key personnel to be assigned to the project with an attestation that personnel are available in sufficient numbers and professional skills and will be effectively used to meet applicable state code and accreditation standards.

(8) **CONSISTENCY OF PROPOSED CONSTRUCTION COSTS WITH INDUSTRY AVERAGES.** The commission shall not approve a project if proposed construction costs are not within industry averages for similar types of construction. Consistency may be demonstrated by an analysis of the cost estimate for the project under construction and a comparison of project construction costs with construction costs of similar projects.

(9) **COST-EFFECTIVENESS OF CONSTRUCTION OR RENOVATION ALTERNATIVES.** (a) The commission shall not approve a project unless the applicant demonstrates that the project is more cost-effective than any other construction or renovation alternative. The application shall contain an analysis which compares the cost-effectiveness of the project and alternatives.

(b) The applicant shall submit a comprehensive analysis of alternative methods for the provision of the project services or functions. The applicant's analysis shall include consideration of the following alternatives:

1. Continuation of the status quo.
2. Variation to the existing program.

3. Renovation of the existing facility.
4. Change in the use of an existing facility.
5. New construction.
6. Available equipment alternatives.

(c) The applicant shall provide a life cycle cost analysis, in a format prescribed by the commission for the alternatives being considered.

(d) The applicant shall have an outside party evaluate the existing physical plant from the standpoint of code compliance, structural integrity, conditions of mechanical, electrical, and energy utilization systems, and functional deficiencies, and prepare a report, a copy of which shall be submitted to the commission.

(10) **CONSISTENCY WITH EFFICIENCY STANDARDS.** The commission shall not approve a project unless the applicant demonstrates that it is undertaken consistent with efficiency standards. Efficiency may be demonstrated by evidence of the extent to which the following apply:

(a) *Improvements or innovations.* The applicant has adopted improvements or innovations in financing and delivery of health services which foster constructive competition, and serve to promote quality assurance and cost effectiveness.

(b) *Strategic planning.* The applicant carries out effective strategic planning that identifies priorities and long-range goals.

(c) *Quality improvement.* The applicant is engaged in a quality improvement program that focuses on system improvements to provide high quality outcomes at the least cost.

(d) *Technology assessment.* The applicant uses generally accepted technology assessment techniques in capital decision-making.

(e) *Low cost provider.* The applicant has demonstrated cost effectiveness for patients and payors as indicated on the hospital cost index.

(11) **PARTICIPATION IN UTILIZATION REVIEW.** (a) The commission shall not approve a project unless the applicant participates in a utilization review program. The applicant shall demonstrate all of the following:

1. The utilization review will evaluate procedures, services and treatments for all patients, regardless of payment source, on a sample basis.

2. It is conducted by persons who are free of any substantial conflict of interest.

3. All review data shall be available for public disclosure to the extent consistent with s. 146.82, Stats. The review data shall keep confidential the identity of the patient and all health care personnel. Data shall be compared to outcome standards for mortality and morbidity.

(b) Preference shall be given to applicants who use outcomes research to improve medical practices and who share performance data with consumers and purchasers.

(12) **PROVISION OF HEALTH CARE TO INDIGENTS.** The commission shall not approve a project unless the appli-



cant has a written indigent care plan on file. Hospitals may meet this criteria by submitting an annual plan on uncompensated health care to the office of health care information.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.15 Ambulatory surgery center criteria. (1) USE.** The criteria set out in this section shall be used in addition to the general review criteria under s. CCC 1.14 to review applications for the construction or operation of new ambulatory surgery centers.

**(2) NEED. (a) Demonstration of need.** The commission shall not approve an ambulatory surgery center unless there is a need for it. The applicant shall demonstrate need. Utilization projections shall anticipate at least 500 surgical procedures per operating room annually for the first 3 years of operation.

**(b) Priority for multiple service provider.** The development of ambulatory surgery centers which will provide a variety of surgical services shall receive priority over those which will provide surgical services in limited specialty areas, unless a specific need has been demonstrated for a special service facility.

**(3) ECONOMIC AND HEALTH CARE IMPACT STATEMENTS.** The applicant shall submit the following impact statements:

**(a)** An economic impact statement which details the effect of the ambulatory surgery center on other providers in the applicant's market area.

**(b)** An impact statement concerning changes in health care service and patient referral patterns which will result from the operation of the ambulatory surgical center in the applicant's market area.

**(4) REQUIRED RESOURCES.** The commission shall not approve an application unless the applicant demonstrates the following:

**(a)** The center is in compliance with requirements established under applicable state and federal programs.

**(b)** The center will have arrangements to provide for emergency transport of patients to a hospital when necessary.

**(c)** The center will have policies which facilitate hospitalization of patients when necessary. All surgeons who perform surgery within the center shall have surgical privileges at a local hospital.

**(5) COST CONTAINMENT.** The commission shall not approve an application unless the following conditions are met:

**(a)** The project's per procedure charge is lower than the historical hospital outpatient charge per procedure in the market area to be served.

**(b)** The applicant demonstrates that the project's services will be coordinated with other community health resources such as hospitals and clinics. The demonstration shall include furnishing copies of memoranda of agreement, correspondence or contracts.

**(6) PHYSICIAN SUPPORT.** The commission shall not approve a project if physician support is not demonstrated

by the applicant. The applicant shall document that at least 10 physicians have provided written commitments to use the center and shall state location, hospital affiliation and number of surgeries to be performed annually by each physician. The projected annual surgeries to be performed by physicians who have provided written commitments shall comprise at least 50% of the surgeries projected by the ambulatory surgery center during the first full year of operation.

**(7) DATA REPORTING REQUIREMENTS.** Ambulatory surgery centers shall provide the commission, on request, with data relating to operating costs and to numbers, types, and origin of patients and other demographic information. The information shall be provided not more often than twice a year unless current data are required for the review of a proposal for the addition of a new ambulatory surgery center in the service area.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.16 Home health agency criteria. (1) USE.** The criteria set out in this section shall be used in addition to the general review criteria under s. CCC 1.14 to review applications for the operation of new home health agencies.

**(2) NEED FOR SERVICES.** The commission may disapprove a new home health agency if the applicant fails to provide the commission with the following information:

**(a)** Letters of support, which shall include estimates of future referrals from physicians, clinics, social service agencies, county departments of social services and any other health or social service referral source.

**(b)** A copy of a written referral agreement or letter of support from each long-term care facility in the agency's service area from which the proposed agency anticipates referrals, including an estimate of the number of projected annual referrals.

**(c)** Copies of written referral agreements or letters of support which include estimates of future referrals from county or state programs providing alternatives to institutionalization, such as the department of health and social services's community options program.

**(d)** A copy of a formal plan of how the home health agency will integrate its services into the continuum of community services offered to assist individuals to remain in their homes.

**(3) FINANCIAL FEASIBILITY.** The commission shall not approve a new home health agency unless the applicant demonstrates that the agency is financially feasible. Financial feasibility shall be demonstrated by the following:

**(a)** Demonstrating that it has sufficient finances to operate the agency for at least 90 calendar days without reimbursement by producing either a letter of credit from a lending institution or an audited financial statement showing adequate cash reserves.

**(b)** Demonstrating that its projected nonprofessional and professional charges for nursing services and therapy services, on a per visit basis, are comparable to rates charged by other home health agencies located in the market area the applicant will serve.

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(4) **INVALIDATION OF AN APPROVAL.** (a) The commission may declare an approval for a new home health agency invalid if the approval holder has not obtained a license under s. 50.49, Stats., and ch. HSS 133 within one year from the date of the approval, pursuant to s. 150.75, Stats. The approval holder has a right to a hearing under s. 227.42, Stats., to review an invalidation under this paragraph.

(b) Since the commission is relying on the representations in the application to be accurate and truthful when granting an approval, the continuing validity of an approval depends on substantial compliance by the applicant with the rates it has represented it will charge. Therefore the approval of any home health agency is invalid under s. 150.75, Stats., if the agency charges rates substantially in excess of those authorized in the approval during the first 2 years of operation. As used in this paragraph, "substantial compliance" means the rates charged in the first 2 years of operation shall not exceed the rates established in the approval by more than 5%.

(5) **DATA REPORTING REQUIREMENTS.** Home health agencies shall provide the commission with data relating to operating costs and to numbers, types, and origin of patients and other demographic information. The information shall be provided on request of the commission, but not more often than twice a year unless current data are required for the review of a proposal for the addition of a new home health agency in the county.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**CCC 1.17 Hospital acquisition criteria.** (1) **USE.** The criteria set out in this section shall be used in addition to the general review criteria under s. CCC 1.14 to review applications to acquire a hospital in order to determine the impact of the acquisition on the health care system.

(2) **INFORMATION REQUIRED.** (a) The application shall include a list of corporations or companies providing health care services that are associated with either the applicant or the hospital to be acquired. The list shall include the name, address, type of business and the nature of the relationship of each business that is owned in whole or in

part, affiliated, operated or under management contract by or with the applicant and the hospital to be acquired.

(b) The applicant shall submit an economic impact statement which details the effect of the acquisition on other providers in the market area of the acquired hospital.

(c) The applicant shall submit an impact statement concerning changes in health care service and patient referral patterns resulting from the acquisition in the market area of the acquired hospital.

(3) **EFFECTIVE COMPETITION.** The commission shall not approve the acquisition of a hospital that would result in the elimination of effective competition in the market area of any hospital associated with the acquisition. The elimination of competition includes the effects of control of associated organizations that refer patients or provide critical support services to competing hospitals.

(4) **RECOMMENDATION OF PURCHASING ORGANIZATIONS.** (a) The need for the project shall be demonstrated by the recommendations of purchasing organizations that purchase health care services for their members directly from the applicant. Recommendations from purchasing organizations requesting prospective clients may also be considered.

(b) The applicant shall provide the commission with the name, address and the percent of total clients represented by each purchasing organization. If the purchasing organization is affiliated with or has an ownership relationship with the applicant, that relationship shall be disclosed. The applicant may provide letters of recommendation from each purchasing organization. The commission may request a separate recommendation from any purchasing organization.

(c) The letter of recommendation, whether favorable or unfavorable, shall be weighted by the percent of clients represented by the purchasing organization.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.