

## CHAPTER 150

## REGULATION OF HEALTH SERVICES

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## SUBCHAPTER I

## DEFINITIONS AND GENERAL PROVISIONS

**150.01 Definitions.** In this chapter:

- (1) "Acquisition" includes a change in ownership.
- (2) "Affected party" means the applicant, local planning agencies, governmental agencies, other persons providing similar services in the applicant's service area, the public to be served by the proposed project, 3rd party payers and any other person who the department determines to be affected by an application for approval of a project.
- (3) "Approval" means a written statement from the department authorizing a person to commence implementing a project under review.
- (5) "Bed capacity" means the number of beds stated on the license of a nursing home issued under s. 50.03.
- (6) "Capital expenditure" means an expenditure by or on behalf of a nursing home or hospital that, under generally accepted accounting principles, is not properly chargeable as an expense of operations or maintenance.
- (8) "Community-based residential facility" has the meaning specified in s. 50.01 (1g).
- (9) "Cost overrun" means an obligation exceeding the maximum capital expenditure authorized by an approval.
- (10) "Department" means the department of health and social services.
- (12) "Hospital" has the meaning specified in s. 50.33 (2), excluding the facilities exempted by s. 50.39 (3).
- (13) "Medical assistance" has the meaning specified in s. 49.43 (8).
- (14) "Natural disaster" means a flood, ice storm, tornado, severe windstorm, mudslide or other act of destruction resulting from weather or geologic conditions beyond the control of the applicant.
- (15) "Nursing home" has the meaning specified in s. 50.01 (3).
- (16) "Obligation" means any enforceable contract that is entered into for the construction, leasing, acquisition or permanent financing of a capital asset.
- (17) "Person" includes the state.
- (19) "Statewide bed limit" means the maximum number of nursing home beds or beds in facilities primarily serving the developmentally disabled allowed to be licensed under ch. 50.
- (20) "Substantial and continuing progress" means spending more than 20% of a project's approved cost, including fees for legal services, planning studies, financing, consul-

tants, inspections, permits, architectural services and interest during construction.

(22) "Working day" has the meaning specified in s. 227.01 (14).

**History:** 1983 a. 27, 206; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 253; 1987 a. 27; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 359.

A new health game. Thomas and Wagner. WBB Feb. 1984.

**150.03 Rule making; forms.** The department shall adopt rules and set standards to administer this chapter. The department shall create the forms to be used and timetables to be followed in applying for an approval and in applying for the renewal or modification of an approval. The department shall issue a statement of the applicable rules and procedures to be followed in reviewing an application with each application form.

**History:** 1983 a. 27

**150.05 Actions in circuit court.** Notwithstanding the existence or pursuit of any other remedy the department may, after consulting with the attorney general, maintain an action in the name of the state in circuit court to restrain or enjoin any violation of this chapter or rules adopted under this chapter.

**History:** 1983 a. 27

**150.07 Subdividing projects prohibited.** No person may subdivide a project to avoid the requirements of this chapter. Transactions separated by 5 years or less that are components of an overall plan for meeting patient care objectives are part of one project.

**History:** 1983 a. 27

**150.09 Staff.** The department may employ staff as needed to administer this chapter.

**History:** 1983 a. 27

**150.11 Enforcement. (1)** The department may refuse to issue or renew any license for a nursing home that fails to comply with this chapter.

(2) No person may recover through charges or rates any depreciation, interest or principal payments or any operating expenses associated with a project subject to subch. II that does not have the department's approval.

(3) (a) If a project whose cost falls below the minimum threshold specified in s. 150.21 (3) or (4) incurs costs exceeding the threshold, the person who operates the project shall submit an application for the department's approval under s. 150.21.

(b) If a project that has received the department's approval incurs a cost overrun, the person who operates the project shall submit another application for the department's approval under s. 150.21.

(c) Any person required to submit an application under this subsection for the department's approval under s. 150.21 shall comply with the time limits for submission of applications under s. 150.33 (3) and (3m). The department shall afford an applicant under this subsection a reasonable time to obtain its approval but if it rejects the application it may refuse to issue or renew a license or approval, as specified in sub. (1), and costs associated with the project may not be recovered through charges or rates, as specified in sub. (2). If the department approves the project it shall impose a forfeiture on the person who operates the project of not less than 10% and not more than 50% of the costs exceeding the threshold under par. (a) or of the cost overrun under par. (b). Project approval takes effect only after payment of the forfeiture has been made.

(4) The department's approval of any project is revoked if the capital expenditures specified in the approval have not been obligated, if financing in an amount sufficient to complete the project has not been obtained or if substantial and continuing progress has not been undertaken within the period specified in the approval. In addition, the department's approval of any project is revoked if the person who operates a project misses any other deadlines specified in the approval and fails to make a good faith effort to meet these deadlines.

(5) The department may reject the application for approval of a project operated by any person who has repeatedly been subject to the penalties specified in this section or may impose restrictions as part of its approval to ensure compliance with this chapter.

History: 1983 a. 27; 1985 a. 72; 1987 a. 27.

**150.13 Fees.** Any person applying for approval 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.

History: 1983 a. 27.

## SUBCHAPTER II

### RESOURCE ALLOCATION PROGRAM; LONG-TERM CARE

**150.21 Applicability.** This subchapter applies to any person who intends to engage in any of the following activities:

- (1) The construction or total replacement of a nursing home.
- (2) An increase in the bed capacity of a nursing home.
- (3) A capital expenditure that exceeds \$600,000 by or on behalf of a nursing home.
- (4) An expenditure that exceeds \$600,000 for clinical equipment by or on behalf of a nursing home.
- (5) The partial or total conversion of a nursing home to a facility primarily serving the developmentally disabled or of a facility primarily serving the developmentally disabled to a nursing home.

History: 1983 a. 27; 1987 a. 27.

**150.27 Limitation on per diem rates.** The per diem rates stated in an application being reviewed under this subchapter are the maximum allowable reimbursement that may be granted by the department for the first full year following licensure of the new beds or completion of the approved

project. If the medical assistance facility payment formula under s. 49.45 (6m) generates per diem rates that are less than those stated in the application under review, the department shall use the lower rates.

History: 1983 a. 27; 1985 a. 29 s. 3200 (23); 1987 a. 27.

**150.29 Approval requirement. (1)** No person may enter into an obligation for a project described in s. 150.21 or engage in activities described in that section without the department's prior approval.

(2) In its approval of any project the department shall specify the total number of approved additional beds and the maximum capital expenditure and per diem rates permitted.

History: 1983 a. 27.

**150.31 Statewide bed limit. (1)** In order to enable the state to budget accurately for medical assistance and to allocate fiscal resources most appropriately, the maximum number of licensed nursing home beds statewide is 51,795 and the maximum number of beds statewide in facilities primarily serving the developmentally disabled is 3,704. The department may adjust these limits on licensed beds as provided in subs. (2) to (6). The department shall also biennially recommend changes to this limit based on the following criteria:

- (a) The number of licensed nursing home beds.
- (c) The total number of additional nursing home beds approved under s. 150.29.
- (d) The availability of alternatives less costly than increasing the number of nursing home beds to provide long-term care.
- (e) The amount of medical assistance funds available or to be made available in the following biennial executive budget for additional nursing home beds.
- (f) The cost of providing additional nursing home beds.

(2) The department may increase the statewide bed limit specified in sub. (1) to account for the conversion of community-based residential facilities to nursing homes in order to maintain medical assistance certification, as provided in s. 49.45 (16).

(2m) (a) The department may, on July 1, 1990, increase the statewide bed limit in sub. (1) by not more than 25 beds to permit the permanent and complete conversion of a hospital to a nursing home if the hospital seeking conversion:

1. Had, on January 1, 1990, an approved bed capacity of no more than 50 beds; and
2. Ceases to exist as an acute care hospital by July 1, 1990.

(b) The department shall decrease the number of beds authorized for increase under par. (a) by the amount of any addition in the actual number of available beds within the limit specified in sub. (1), up to 25 beds, that exists on July 1, 1990.

(3) The department may decrease the statewide bed limit specified in sub. (1) to account for nursing home beds that are not set up or not staffed due to life safety code or physical plant requirements under s. 50.04, but that have not been permanently removed from the nursing home's bed capacity. In addition, the department may decrease the statewide bed limit specified in sub. (1) to account for beds closed under a medical assistance waiver, as specified in 42 USC 1396n (c) or under other medical assistance waivers specified in 42 USC 1396 to 1396n.

(4) The department may decrease the statewide bed limit in facilities primarily serving the developmentally disabled in order to account for any decreased use of beds at the state centers for the developmentally disabled due to the community integration program under s. 46.275.

(5) The department may decrease the statewide bed limits specified in sub. (1) to account for any reduction of available

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beds not included under sub. (3) or (4), in accordance with criteria promulgated by rule.

(6) The department may adjust the statewide bed limits specified in sub. (1) to account for the partial or total conversion of nursing homes to facilities primarily serving the developmentally disabled or of facilities primarily serving the developmentally disabled to nursing homes. The department may promulgate rules limiting the number of nursing home beds converted under this subsection, allocating the beds so converted, and establishing standards for the limitation and allocation.

(7) The department may not approve or license any additional nursing home beds if the addition of those beds would exceed the limits established under subs. (1) to (6).

(8) The department may allocate or distribute nursing home beds in a manner, developed by rule, that is consistent with the criteria specified in sub. (1) (a) to (f) and s. 150.39.

*History:* 1983 a. 27; 1985 a. 29; 1987 a. 27; 1989 a. 336.

**150.32 Distinct-part facilities primarily serving the developmentally disabled.**

(1) Upon application to the department, the department may approve the operation for a period of time not to exceed 4 years of a distinct part of a nursing home as a facility primarily serving the developmentally disabled. Renewals of approvals initially granted under this subsection may be granted for periods of time not to exceed 4 years and only if all of the following conditions are met by the renewal applicant:

(a) Continued operation of the facility primarily serving the developmentally disabled meets the review criteria and standards under ss. 150.31 (6) and 150.39.

(b) There is continued need, as determined by the department, for the facility primarily serving the developmentally disabled in the health planning area in which the facility is located.

(c) Community-based services, including services developed under s. 46.278, are inappropriate for the individuals served in the facility primarily serving the developmentally disabled.

(2) The department may require that a nursing home seeking approval or a facility primarily serving the developmentally disabled seeking renewal under sub. (1) agree to reduce the size of the facility primarily serving the developmentally disabled, under a plan submitted by the facility and approved by the department, during the approval or renewal period, in order to reflect reduced service need or increased availability of community-based services providing long-term care.

(3) Notwithstanding s. 150.31 (6), the department may waive any minimum size limits established under s. 150.31 (6) for a facility with an approved plan under sub. (2).

(4) Notwithstanding s. 150.29, if initial approval of a facility primarily serving the developmentally disabled is not renewed under sub. (1) or if approval or renewal is conditioned upon the requirement of sub. (2), reconversion to nursing home beds of beds which may not be operated as part of a facility primarily serving the developmentally disabled does not require approval under s. 150.29.

*History:* 1987 a. 27.

**150.33 Applications for available beds.** (1) At least once each year the department shall publish a class 2 notice under ch. 985 concerning the number of nursing home beds and beds in facilities primarily serving the developmentally disabled, if any, that are available under s. 150.31 or 150.40 in each of its health planning areas. The department shall promulgate rules defining the boundaries of these areas. The

notice shall state the procedures by which any person may apply for approval for those beds.

(3) The department shall provide forms for submitting applications but may only accept applications submitted within 60 days after it publishes a notice under sub. (1).

(3m) The department shall review each application it receives for completeness. If the department finds that the application is incomplete, it shall notify the applicant of the information required within 10 working days after receiving the application. Each applicant shall provide any required additional information within 30 days following the closing date for accepting applications specified in sub. (3). The department may not accept for review any incomplete application if it fails to receive the additional information within this 30-day period until it issues another public notice soliciting applications under sub. (1). The department shall declare the application complete on the date on which the department receives all the required information.

(4) The department shall issue a class 2 notice under ch. 985 within 20 days after the date on which it declares all applications complete under sub. (3m), listing all applicants and describing their applications.

*History:* 1983 a. 27; 1987 a. 27 ss. 1868 to 1871, 1874; 1987 a. 399.

**150.34 Other applications.** (1) Any person intending to engage in activities subject to this subchapter not specified under s. 150.33 shall notify the department in writing of this intent at least 30 days prior to submitting an application for review. An application expires unless the department declares the application complete under sub. (2) within 365 days after the date the department receives notice of the applicant's intent to engage in the activity. The department shall provide forms for submitting applications under this section.

(2) The department shall review each application it receives for completeness. If the department finds that the application is incomplete, it shall notify the applicant of the information required within 10 working days after receiving the application. The department shall declare the application complete on the date on which the department receives all the required information.

(3) The department shall issue a class 2 notice under ch. 985 on or before the 20th day of the month following the month in which it declares an application complete under sub. (2), listing the applicant and describing the applicant's proposed activity.

*History:* 1987 a. 27, 399; 1989 a. 56.

**150.35 Review procedures.** (2) The department shall hold a public meeting upon the request of an affected party to review applications under s. 150.33 or 150.34, at which all affected parties may present testimony. The department shall keep minutes or other record of testimony presented at the public meeting and shall, based on the testimony, consider the record in determining whether the applicant has met the review criteria under s. 150.39.

(3) Except as provided under sub. (3m), the department shall issue an initial finding to approve or reject the application within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3), unless all applicants consent to an extension of this period. The department may extend by 60 days the review cycle of all applications being concurrently reviewed if it finds that completing the reviews within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3) is not practicable due to the volume of applications received. The department shall base its initial finding on a comparative analysis of applications, relying on the criteria specified in s. 150.39. The applicant has the burden of proving, by a preponderance of the evidence, that each

criterion specified in s. 150.39 has been met or does not apply to the project. The department may approve fewer additional nursing home beds than allowed by the statewide bed limit if the cost of adding those beds exceeds the medical assistance allocation for new beds projected in s. 150.31 (1) (e). Unless an adversely affected applicant makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final action.

(3m) The department may receive any application which was developed under a plan of correction, as defined in s. 50.01 (4r), previously approved by the department and which does not add beds to the current licensed bed capacity, or any application involving a cost overrun submitted under s. 150.11 (3). Subsection (2) does not apply to these applications. Within 60 days after it receives a completed application, the department shall, according to procedures it promulgates by rule, review the application and issue its initial finding. No public meeting need be held on any project submitted under this subsection. Unless an adversely affected applicant makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final decision.

(4) (a) Any applicant whose project is rejected may request a public hearing to review the department's initial finding under sub. (3) or (3m), if the request is submitted in writing within 10 days after the department's decision. The department shall commence the hearing within 30 days after receiving a timely request, unless all parties consent to an extension of this period.

(b) Sections 227.42 to 227.50 do not apply to hearings under this subsection. The department shall promulgate rules to establish:

1. Procedures for scheduling hearings under this subsection.

2. Procedures for conducting hearings under this subsection, including methods of presenting arguments, cross-examination of witnesses and submission of exhibits.

3. Procedures following the completion of a hearing under this subsection, including the establishment of time limits for issuance of a decision.

4. Standards relating to ex parte communication in hearings under this subsection.

5. Procedures for reconsideration and rehearing.

(c) The department shall issue all decisions in writing.

(d) Each applicant at any hearing under this subsection has the burden of proving, by clear and convincing evidence, that the department's initial finding was contrary to the weight of the evidence on the record when considered as a whole, arbitrary and capricious or contrary to law.

**History:** 1983 a. 27; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 173.

**150.39 Review criteria and standards.** The department shall use the following criteria in reviewing each application under this subchapter, plus any additional criteria it develops by rule. The department shall consider cost containment as its first priority in applying these criteria, and shall consider the comments of affected parties. The department may not approve any project under this subchapter unless the applicant demonstrates:

(1) The medical assistance funds appropriated are sufficient to reimburse the applicant for providing the nursing home care.

(2) The cost of renovating or providing an equal number of nursing home beds or of an equal expansion would be consistent with the cost at similar nursing homes, and the applicant's per diem rates would be consistent with those of similar nursing homes.

(3) The project does not conflict with the statewide bed limit under s. 150.31.

(4) A need for additional beds in the health planning area where the project would be located.

(5) The project is consistent with local plans for developing community-based services to provide long-term care.

(6) Health care personnel, capital and operating funds and other resources needed to provide the proposed services are available.

(7) The project can be undertaken within the period of validity of the approval and completed within a reasonable period thereafter.

(8) Appropriate methods alternative to providing nursing home care in the health planning area are unavailable.

(9) The project is consistent with the state health plan created under s. 140.82 (1) (b).

(10) The quality of care to be provided is satisfactory, as determined by:

(a) The department's investigations.

(b) Materials submitted by the applicant, including independent evaluations of performance in nursing homes owned or operated by the applicant and patient satisfaction surveys.

(c) Recommendations from affected parties concerning the quality of care provided in nursing homes owned or operated by the applicant.

**History:** 1983 a. 27; 1987 a. 399.

**150.40 Redistribution of closed beds.** (1) The department shall redistribute within a county the nursing home beds made available as a result of a nursing home closure within that county if all of the following apply at the time of the closure:

(a) The number of other nursing home beds for each 1,000 persons 65 years of age or over in the county is less than 80% of the statewide average of nursing home beds for each 1,000 persons 65 years of age or over.

(b) The total occupancy level for the other nursing homes in the county is equal to or more than the statewide average nursing home occupancy rate.

(2) Subsection (1) does not apply to the following:

(a) Nursing home beds closed under a plan approved by the department under s. 46.277 (3) (b) or 46.278 (4) (b) 1, as a result of the relocation of former residents to community-based settings.

(b) Facilities primarily serving the developmentally disabled.

**History:** 1985 a. 29; 1987 a. 27.

**150.41 Approvals not transferable.** No person may transfer through sale, lease or donation any approval granted under this subchapter. The sale, lease or donation of a nursing home before the completion or licensure of a project at that nursing home voids the approval. This section does not apply to transfers of stock within a corporation that do not alter the controlling interest in the corporation.

**History:** 1983 a. 27.

**150.43 Judicial review.** Any applicant adversely affected by a decision of the department under s. 150.35 (4) may petition for judicial review of the decision under s. 227.52. The scope of judicial review shall be as provided in s. 227.57 and the record before the reviewing court shall consist of:

(1) The application and all supporting material received prior to the department's decision under s. 150.35 (3) or (3m).

(2) The record of the public meeting, if any, under s. 150.35 (2).

(3) The department's analysis of the project and its compliance with the criteria specified in s. 150.39.

(5) Concluding briefs and arguments at a hearing and the findings of fact of the hearing examiner at the hearing under s. 150.35 (4).

(6) The department's findings and conclusions issued under s. 150.35 (3) or (3m).

History: 1983 a. 27; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 173.

**150.45 Validity of an approval.** (1) An approval is valid for one year from the date of issuance. The department may grant a single extension of up to 6 months, but only if a strike against or bankruptcy of a contractor, subcontractor or major supplier previously committed to the project occurs or if a fire or natural disaster significantly delays or damages the project.

(2) The department shall specify the maximum capital expenditure that may be obligated for a project.

(3) Any person whose project has been approved under this subchapter shall document in writing, on forms developed by the department, the progress of the project. The person shall submit these forms semiannually until the project is completed. On these forms, the person shall:

- (a) Identify the project and the approval holder.
- (b) Specify the date of approval.
- (c) Describe the stages of the project that are complete.
- (d) Report on the project's status, including any deficiencies.
- (e) Identify any cost overrun and propose changes in the project necessary to reduce costs, so as not to exceed the maximum approved capital expenditure.
- (f) Estimate the date that uncompleted stages of the project will be completed.

History: 1983 a. 27.

SUBCHAPTER III

GENERAL PROVISIONS

**150.83 State medical facilities plan.** The department shall adopt a state medical facilities plan at least once every 3 years that includes a description of the hospital system in the state and identifies needed or surplus hospital beds. Each plan, except the initial plan adopted under this section, shall also include a description of needed and surplus health services plus other components the department finds useful.

History: 1983 a. 27; 1987 a. 27.

**150.85 Subchapter applicability.** Section 150.83 does not apply after July 1, 1989.

History: 1985 a. 29; 1987 a. 27.

**150.90 Enforcement prohibited.** Beginning on August 1, 1987, no person may do any of the following:

(1) Enforce the provisions of the capital expenditure review program under this subchapter or rules promulgated, orders issued or conditions imposed under the provisions of the capital expenditure review program under this subchapter in effect prior to August 1, 1987.

(2) Enforce the provisions of the certificate of need program under subch. II or rules promulgated, orders issued or conditions imposed under the provisions of the certificate of need program under subch. II in effect prior to July 2, 1983.

History: 1987 a. 27.