

2001 Jr2 DRAFTING REQUEST

Senate Amendment (SA-SSA1-AB1)

Received: **04/03/2002**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Senate Democratic Caucus 266-9220**

By/Representing: **Engel**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - facility licensure
Health - capital expenditure**

Extra Copies:

Submit via email: **NO**

Pre Topic:

SCC:.....Engel - CN5565,

Topic:

Hospital and ambulatory surgery center limitations and requirements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kenneda 04/04/2002	csicilia 04/04/2002	rschluet 04/04/2002	_____	lrb_docadmin 04/04/2002		
/1	kenneda 04/04/2002	csicilia 04/04/2002	rschluet 04/04/2002	_____	lrb_docadmin 04/04/2002		

FE Sent For:

<END>

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FE Sent For:

1 cys 4/4
02


<END>
4-4-2

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1?	kenneda	/Pl gjs 4/4/02					
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FE Sent For:

4-4-2
<END>

CN 5565

HEALTH AND FAMILY SERVICES

Establish a building and licensing moratorium on hospital construction and expansion projects. Exemption would be allowed for: hospital consolidation; response to natural disasters or fire; critical access hospitals.

Require hospitals to be certified as Medicare and Medicaid providers and accept Medicare and Medicaid patients as a condition of licensure. Further require that hospitals operate a 24-hour emergency room that meets all statutory and regulatory criteria for an emergency room. The hospital must have the capability of providing advanced life support in the ER or during transport. Hospitals not having the capability to care for patients with problems outside the hospital's specialty area must have a transfer agreement with a general hospital. (Mental health / AODA hospitals would be exempt from this requirement.

(Optional pending discussions with the Medical Society) Require administrative rules that would define unprofessional conduct under chapter 448 for physicians with staff privileges at multiple hospitals to refer and treat patients at one facility or another based on their ownership interest in a particular facility.

if doesn't increase total number of beds in use

+ can't add a specialty service (HFS def of service)

Rehabilitative

4/3/02

Sens. Moeu + Decker

Melissa: Takes 6 mo from groundbreaking to issuance of licensure

Critical access hosp. get new provider

HFS sez must get revised license if change location

~~If want~~

amendment to articles

increase ~~in~~ in bed size

① Applies to all hospitals + amb. surgery centers
(Rules call them general hosps + specialty hosps)

② Require revised license for

ⓐ Renovation (may not include increase in beds or adding service, but may include maint.)

~~Maratorium~~

+ an ^{upgrade} update in technology

(Def. of service to be defined narrowly)

(see HFS 124)

ⓑ DHS to prom rules defining renovation; emergency rules first

③

ⓐ Maratorium on construction + expansion

for new licensure + revisions, unless wd. result only in maint. or upgrade

Marat. on new construction only

or revision (change in location)

or relocations

~~necessitated by building~~

~~code~~ ^{unsafe} ~~inability to comply w/~~

JCHO accreditation bec. of physical plant

requests or threats to pt. safety or ^{staff} general public

existing phys plant, all as determined by DHS

notice, being offered to comply

Condition of licensure: May suspend or revoke if:

A Mor on expansion of beds ~~or services~~ expansion of services as defined in stat.

B Mor on construction HFS 124.03

3 exceptions 1) that deserts 2) consolid 3) threat to pt staff + gen pub safety due to physical defect

C Mor on upgrade renov. (by by rule) that does not include routine maintenance or maint required for patient + staff public safety

~~D. Require new licenses~~

Mor. ~~require license to~~ ~~Require DHS approval~~ as def by rule + as approved by DHS

If hosp seeks opinion
DHS must give opinion

C. Mor on upgrade renov + expansion of services as def. by rule

Exception Routine maint
Maint. for pt, staff, gen-pub. safety
Moratorium on this until DHS promulgate

D. Morat. on new licenses except for hospo converting to critical access hospo.

except if the primary purpose is to provide ^{new service} ~~health care~~ ~~services that primarily~~ free or reduced ^{cost} ~~charge~~ health care to underserved or low income populations or dental provided

If hosp seeks opinion, DHS must give opinion + is bound by it unless actual project differs materially from proposed project

As a cond of licensure

Require all hosps to apply by ⁶⁰~~30~~ days of
eff date for certif. as MA + Med certif. Upon receipt of
certif, must accept MA + MED pts

Must operate a 24-hour emergency room
that meets all stat + reg. criteria or must have
transfer agreement - ~~90 days~~ ^{9mo} after passage - as a
condit of licensure

If build new hosp, has to include ~~ER~~ ER plus a
transfer agreement; consent of recip. fac is
required

except that all hospitals currently licensed
must have ER or transfer agreement
under wh/ receiving facil may consent
to receiving emergency pts.

Exempt mh/AODA + rehab hospitals from ER
requirements

Notice, fair hearing requirements for loss of approval.



TODAY 4/4
State of Wisconsin
2001 - 2002 LEGISLATURE

January 2002 Special Session

LRBb2974/P1

DAK:j:.....

CS

SCC:.....Engel - CN5565, Hospital and ambulatory surgery center
limitations and requirements

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 47, line 25: after that line insert:

3 "SECTION ^{NOCS} 148G. 50.35 of the statutes is amended to read:

4 **50.35 Application and approval.** Application for approval to maintain a
5 hospital shall be made to the department on forms provided by the department. On
6 receipt of an application, the department shall, except as provided in this section and
7 s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet
8 the requirements established by the department. Except as provided in s. 50.498,
9 this approval shall be in effect until, for just cause and in the manner herein
10 prescribed, it is suspended or revoked. The certificate of approval may be issued only

9123 (5gr)

1 for the premises and persons or governmental unit named in the application and is
 2 not transferable or assignable. The department shall withhold, suspend or revoke
 3 approval for a violation of s. 150.935 (2) or a failure to comply with s. 150.935 (3) or
 4 165.40 (6) (a) 1. or 2. or 2001 Wisconsin Act (this act), section ~~9123(1)~~, but, except
 5 as provided in s. 50.498, otherwise may not withhold, suspend or revoke approval
 6 unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules and
 7 standards adopted by the department after giving a reasonable notice, a fair hearing
 8 and a reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36
 9 (3m) shall be considered to be a substantial failure to comply under this section.
 10 After the effective date of this section [revisor inserts date], the department may
 11 not issue an initial certificate of approval ~~unless~~ for a critical access hospital that is
 12 converted from a previously-approved hospital.”

change to a square bracket please

except

History: 1975 c. 413 ss. 4, 18; Stats. ^{NOCS} 1975 s. 50.35; 1989 a. 37; 1997 a. 93, 237.

SECTION 148H. 50.35 of the statutes, as affected by 2001 Wisconsin Act (this act), is amended to read:

50.35 Application and approval. Application for approval to maintain a hospital shall be made to the department on forms provided by the department. On receipt of an application, the department shall, except as provided in this section and s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet the requirements established by the department. Except as provided in s. 50.498, this approval shall be in effect until, for just cause and in the manner herein prescribed, it is suspended or revoked. The certificate of approval may be issued only for the premises and persons or governmental unit named in the application and is not transferable or assignable. The department shall withhold, suspend or revoke approval for a violation of s. 150.935 (2) or a failure to comply with s. 150.935

strike

OR 2001 Wisconsin Act... (this act),
section 9123 (59R)

OR Δ

1 (3) 165.40 (6) (a) 1. or 2, but, except as provided in s. 50.498, otherwise may not
2 withhold, suspend or revoke approval unless for a substantial failure to comply with
3 ss. 50.32 to 50.39 or the rules and standards adopted by the department after giving
4 a reasonable notice, a fair hearing and a reasonable opportunity to comply. Failure
5 by a hospital to comply with s. 50.36 (3m) shall be considered to be a substantial
6 failure to comply under this section. After the effective date of this section [revisor
7 inserts date], the department may not issue an initial certificate of approval ~~unless~~
8 for a critical access hospital that is converted from a previously-approved hospital.

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.35; 1989 a. 37; 1997 a. 93, 237.

9 2. Page 172, line 10: after that line insert:

except

10 "SECTION 336CC. 150.01 (2g) of the statutes is created to read:
11 150.01 (2g) "Ambulatory surgery center" has the meaning given in 42 CFR
12 416.2.

13 SECTION 336CD. 150.01 (8g) of the statutes is created to read:
14 150.01 (8g) "Construction" means the establishment, erection, building,
15 purchase, or other acquisition of a hospital or ambulatory surgery center.

****NOTE: This definition is modeled after that in Maine's Certificate of Need legislation.

16 SECTION 336CE. 150.01 (9m) of the statutes is created to read:
17 150.01 (9m) "Critical access hospital" has the meaning given in s. 50.33 (1g).

18 SECTION 336CF. Subchapter VI (title) of chapter 150 [precedes 150.93] of the
19 statutes is amended to read:

20 CHAPTER 150
21 SUBCHAPTER VI
22 MORATORIUM ON CONSTRUCTION
23 OF HOSPITAL BEDS AND AMBULATORY SURGERY CENTER LIMITATIONS

#. Page 172, line 25: after that line insert:

keep bracket

hard return

hard return

X1 SECTION 336~~CS~~^{noCS} 150.93 (1) of the statutes is renumbered 150.935 (1). ⁹

X2 SECTION 336~~CS~~^{noCS} 150.93 (2) to (5) of the statutes are repealed. ^r

X3 SECTION 336~~CS~~^{noCS} 150.935 of the statutes is created to read: rd

4 **150.935 Limitations on hospitals and ambulatory surgery centers. (2)**

5 As a condition of hospital approval under s. 50.35, no person may, by or on behalf of
6 a hospital, do any of the following: increase, or

7 (a) Obligate for a capital expenditure to increase, or otherwise increase, the
8 number of occupied beds of the hospital that are occupied on the effective date of this
9 paragraph [revisor inserts date].

***NOTE: I am not sure that this provision "works". If what you want in the provision is the number of beds of a hospital that are "in use," the only way I could figure to capture the concept was to peg that number to a specific day, e.g., the day after publication of the act. However, the effect of this provision is that a hospital must turn away patients in excess of the number it had in occupancy on that particular day. The alternative is to refer to the approved bed capacity of the hospital.

***NOTE: Note the term "obligate for capital expenditure." It mirrors s. 150.93 (3), stats., currently, and ties into the definition of "capital expenditure" under s. 150.01 (6), stats.; is this what you want? ^e

10 (b) Expand an existing service of the hospital, unless the primary purpose of
11 the expanded service is to provide free or reduced-cost health or dental care to
12 individuals who are determined by the department to be underserved or to have low
13 income.

14 (c) Engage in construction, except for the purposes of any of the following:

15 1. Consolidation of hospitals, if the consolidation does not increase the
16 approved bed capacities of the hospitals.

***NOTE: See 1st NOTE under par. (a).

17 2. As a response to damage caused by a natural disaster, including an
18 earthquake, or by a fire.

1 3. To eliminate a threat to the safety to patients, staff, or the general public that
2 is due to a physical defect of the hospital.

3 (d) 1. Before January 1, 2003, engage in upgrading renovation, except for
4 routine maintenance or maintenance to eliminate a threat to the safety of patients,
5 staff, or the general public.

6 2. If a hospital seeks an opinion from the department concerning whether a
7 proposed project of the hospital violates subd. 1., the department shall issue the
8 opinion. If the hospital, after completing the project, is found to be in violation of subd.
9 1., the violation does not affect the status of the hospital's approval under s. 50.35
10 unless the actual, completed project differs materially from the proposed project for
11 which the department issued an opinion.

12 (3) As a condition of hospital approval under s. 50.33³⁵, a hospital shall do all of
13 the following:

14 (a) If the hospital is certified under s. 49.45 (2) (a) 11. as a provider of medical
15 assistance or certified as a provider of services under medicare, as defined in s. 49.45
16 (3) (L) 1. b., or if the hospital obtains this certification, accept as patients individuals
17 who are medical assistance recipients or medicare beneficiaries.

****NOTE: Does this apply to asc's?

18 (b) Operate a 24-hour emergency room or have in effect an agreement with
19 another hospital with a 24-hour emergency room under which that other hospital
20 consents to receive patients in need of emergency care that are transferred to it by
21 the hospital that does not operate a 24-hour emergency room. This paragraph does
22 not apply to a hospital that is an inpatient facility, as defined in s. 51.01 (10) or that
23 is certified under s. 49.45 (2) (a) 11. as a rehabilitation hospital.

1 (4) No person may, by or on behalf of an ambulatory surgery center, do any of
2 the following:

3 (a) Obligate for a capital expenditure to increase, *(increase, or*
4 number of occupied beds of the ambulatory surgery center that are occupied on the
5 effective date of this paragraph *....* ~~or otherwise increase~~, the
revisor inserts date].

***NOTE: See the NOTE under sub. (2) (a)

***NOTE: Does DHFS approve the bed capacity of an ambulatory surgery center?
Note that this prohibition is not tied in to licensure or approval, because ambulatory
surgery centers are not so regulated by DHFS. If you want some attendant punishment
for violation of the prohibition, please tell me what it would be.

6 (b) Expand an existing service of the ambulatory surgery center unless the
7 primary purpose of the new service is to provide free or reduced-cost health or dental
8 care to individuals who are determined by the department to be underserved or to
9 have low income.

***NOTE: See NOTE under sub. (2) (b).

10 (c) Engage in construction, except for *the purposes of* any of the following:

11 1. As a response to damage caused by a natural disaster, including an
12 earthquake, or by a fire.

13 2. To eliminate a threat to the safety of patients, staff, or the general public that
14 is due to a physical defect of the ambulatory surgery center.

15 (d) 1. Before January 1, 2003, engage in upgrading renovation, except for
16 routine maintenance or maintenance to eliminate a threat to the safety of patients,
17 staff, or the general public.

18 2. If an ambulatory surgery center seeks an opinion from the department
19 concerning whether a proposed project of the ambulatory surgery center violates
20 subd. 1., the department shall issue the opinion. If the ambulatory surgery center,
21 after competing the project, is found to be in violation of subd. 1., the ***** unless

1 the actual, completed project differs materially from the proposed project for which
2 the department issued an opinion.

****NOTE: Does this apply to an asc?

Sqr

****NOTE: What is the punishment that must be described in subd. 2?

3 (5) The department shall promulgate as a rule a definition of "upgrading
4 renovation," for the purposes of sub. (2) (d) 1. and (4)(d) 1.

period goes first, before handwritten material

5 (6) The department may, under s. 50.35, revoke or suspend approval for a
6 hospital that violates sub. (2) or fails to comply with sub. (3) or 2002 Wisconsin Act
7 (this act), section 9123 (#), after giving reasonable notice, a fair hearing and, if
8 appropriate as determined by the department, a reasonable opportunity to comply.

9 SECTION 3360. 150.935 (2) (d) 1. of the statutes, as created by 2001 Wisconsin
10 Act (this act), is amended to read:

no CS

rf

11 150.935 (2) (d) 1. ~~Before January 1, 2003, engage~~ Engage in upgrading
12 renovation, as defined by rule by the department, except for routine maintenance or
13 maintenance to eliminate a threat to the safety of patients, staff, or the general
14 public."

15 SECTION 3360. 150.935 (4) (d) 1. of the statutes, as created by 2001 Wisconsin
16 Act (this act), is amended to read:

no CS

rh

17 150.935 (4) (d) 1. ~~Before January 1, 2003, engage~~ Engage in upgrading
18 renovation, as defined by rule by the department, except for routine maintenance or
19 maintenance to eliminate a threat to the safety of patients, staff, or the general
20 public.

21 SECTION 3360. 150.935 (6) of the statutes, as created by 2001 Wisconsin Act
22 (this act), is amended to read:

no CS

rl

1 150.935 (6) The department may, under s. 50.35, revoke or suspend approval
2 for a hospital that violates sub. (2) or fails to comply with sub. (3) or 2002 Wisconsin
3 Act (this act), section 9123 (7), after giving reasonable notice, a fair hearing and,
4 if appropriate as determined by the department, a reasonable opportunity to
5 comply.”

6 **3.** Page 358, line 15: after that line insert:

7 “⁵⁹² (1) LIMITATIONS ON HOSPITALS AND AMBULATORY SURGERY CENTERS; RULES. (a) The
8 department of health and family services shall submit in proposed form the rule
9 required under section 150.935 (5) of the statutes, as created by this act, to the
10 legislative council staff under section 227.15 (1) of the statutes no later than the first
11 day of the 4th month beginning after the effective date of this paragraph.”

12 (b) Using the procedure under section 227.24 of the statutes, the department
13 of health and family services may promulgate the rule required under section
14 150.935 (5) of the statutes, as created by this act, for the period before the effective
15 date of the rule^e submitted under paragraph (a), but not to exceed the period
16 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding ✓
17 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required ✓
18 to provide evidence that promulgating a rule under this paragraph as an emergency ✓
19 rule is necessary for the preservation of the public peace, health, safety, or welfare
20 and is not required to provide a finding of emergency for a rule promulgated under
21 this paragraph.”

22 “⁵⁹² (2) REQUIREMENTS OF HOSPITALS. As a condition of approval under section 50.35
23 of the statutes, as affected by this act, a hospital shall, within 60 days after the
24 effective date of this subsection, apply under section 49.45 (2) (a) 11. of the statutes

1 for certification as a provider of medical assistance and apply for certification as a
2 provider of services under medicare, as defined under section 49.45 (3) (L) 1. b. of the
3 statutes.”

4 4. Page 435, line 24: after that line insert:

5 “(2) LIMITATION ON UPGRADING RENOVATIONS. The creation of section 150.935 (2)
6 (d) 1. and (4) (d) 1. of the statutes first applies to upgrading renovation in which a
7 hospital or ambulatory surgery center is engaged on the effective date of this
8 subsection.”

9 5. Page 446, line 6: after that line insert:

10 “(7) LIMITATIONS ON HOSPITALS AND AMBULATORY SURGERY CENTERS. (a) The
11 amendment of section 50.35 of the statutes by SECTION 148h and the amendment
12 of section 150.935 (6) of the statutes by SECTION 336a take effect on the first day
13 of the 3rd month beginning after publication.

14 (b) The amendment of section 150.935 (d) 1. and (4) (d) 1. of the statutes
15 takes effect on January 1, 2003.

16 (c) The treatment of section 150.935 (3) (b) of the statutes takes effect on the
17 first day of the 9th month beginning after publication.”

18 (END)

2a

3a

(by Section 148h)

treatment

2

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE: 4/4/02
CONVERSATION WITH: ~~Barbara Winters~~ Rachel
OF: ~~Sen. Dick Durbin's office~~ LFB
TELEPHONE NO: ~~6-2283~~
REGARDING LRB # OR DRAFT TOPIC: b 2974/P1

INSTRUCTIONS: Redraft

- ✓ ① p. 4, ll. 8 + 16 - add "available approved"
- ✓ ② p. 5, ll. 14-17 - add as (a) under (4) on p. 6
change other numbers
- ✓ ③ p. 5, l. 18 - after "or" add : "for a hosp ~~that~~
was approved under s. 50.35 ^{and} the effective
date of this paragraph ... [reviser inserts date]"
- ✓ ④ p. 6 - delete (4) (a) - an amb. surg. center
doesn't really have beds. If the department is that the
proposed project does not
- ✓ ⑤ p. 6, l. 20 - An asc ^{If the opinion after} may not be found in ^{via} ^{subd.}
Vial ^{subd.} ^{completing the project}



(NOW)
State of Wisconsin
2001 - 2002 LEGISLATURE
January 2002 Special Session

LRBb2974/11
DAK:cs:rs

SCC:.....Engel - CN5565, Hospital and ambulatory surgery center
limitations and requirements

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 47, line 25: after that line insert:

3 "SECTION 148g. 50.35 of the statutes is amended to read:

4 50.35 Application and approval. Application for approval to maintain a
5 hospital shall be made to the department on forms provided by the department. On
6 receipt of an application, the department shall, except as provided in this section and
7 s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet
8 the requirements established by the department. Except as provided in s. 50.498,
9 this approval shall be in effect until, for just cause and in the manner herein
10 prescribed, it is suspended or revoked. The certificate of approval may be issued only

1 for the premises and persons or governmental unit named in the application and is
2 not transferable or assignable. The department shall withhold, suspend or revoke
3 approval for a violation of s. 150.935 (2) or a failure to comply with s. 150.935 (3) or
4 165.40 (6) (a) 1. or 2. or 2001 Wisconsin Act (this act), section 9123 (5qr), but,
5 except as provided in s. 50.498, otherwise may not withhold, suspend or revoke
6 approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules
7 and standards adopted by the department after giving a reasonable notice, a fair
8 hearing and a reasonable opportunity to comply. Failure by a hospital to comply with
9 s. 50.36 (3m) shall be considered to be a substantial failure to comply under this
10 section. After the effective date of this section [revisor inserts date], the
11 department may not issue an initial certificate of approval except for a critical access
12 hospital that is converted from a previously-approved hospital.”

13 **SECTION 148h.** 50.35 of the statutes, as affected by 2001 Wisconsin Act (this
14 act), is amended to read:

15 **50.35 Application and approval.** Application for approval to maintain a
16 hospital shall be made to the department on forms provided by the department. On
17 receipt of an application, the department shall, except as provided in this section and
18 s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet
19 the requirements established by the department. Except as provided in s. 50.498,
20 this approval shall be in effect until, for just cause and in the manner herein
21 prescribed, it is suspended or revoked. The certificate of approval may be issued only
22 for the premises and persons or governmental unit named in the application and is
23 not transferable or assignable. The department shall withhold, suspend or revoke
24 approval for a violation of s. 150.935 (2) or a failure to comply with s. 150.935 (3) or
25 165.40 (6) (a) 1. or 2. ~~or 2001 Wisconsin Act (this act), section 9123 (5qr), but,~~

1 except as provided in s. 50.498, otherwise may not withhold, suspend or revoke
2 approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules
3 and standards adopted by the department after giving a reasonable notice, a fair
4 hearing and a reasonable opportunity to comply. Failure by a hospital to comply with
5 s. 50.36 (3m) shall be considered to be a substantial failure to comply under this
6 section. After the effective date of this section [revisor inserts date], the
7 department may not issue an initial certificate of approval except for a critical access
8 hospital that is converted from a previously-approved hospital.”

9 **2.** Page 172, line 10: after that line insert:

10 “SECTION 336cc. 150.01 (2g) of the statutes is created to read:

11 150.01 (2g) “Ambulatory surgery center” has the meaning given in 42 CFR
12 416.2.

13 SECTION 336cd. 150.01 (8g) of the statutes is created to read:

14 150.01 (8g) “Construction” means the establishment, erection, building,
15 purchase, or other acquisition of a hospital or ambulatory surgery center.

****NOTE: This definition is modeled after that in Maine’s Certificate of Need
legislation.

16 SECTION 336ce. 150.01 (9m) of the statutes is created to read:

17 150.01 (9m) “Critical access hospital” has the meaning given in s. 50.33 (1g).”

18 **3.** Page 172, line 25: after that line insert:

19 “SECTION 336p. Subchapter VI (title) of chapter 150 [precedes 150.93] of the
20 statutes is amended to read:

21 **CHAPTER 150**

22 **SUBCHAPTER VI**

MORATORIUM ON CONSTRUCTION
OF HOSPITAL BEDS AND AMBULATORY
SURGERY CENTER LIMITATIONS

SECTION 336q. 150.93 (1) of the statutes is renumbered 150.935 (1).

SECTION 336r. 150.93 (2) to (5) of the statutes are repealed.

SECTION 336rd. 150.935 of the statutes is created to read:

150.935 Limitations on hospitals and ambulatory surgery centers. (2)

As a condition of hospital approval under s. 50.35, no person may, by or on behalf of a hospital, do any of the following:

(a) Increase, or obligate for a capital expenditure to increase, the number of ~~occupied~~ beds of the hospital that are ~~occupied~~ ^{approved} on the effective date of this paragraph [revisor inserts date]. ^{available}

****NOTE: I am not sure that this provision "works." If what you want in the provision is the number of beds of a hospital that are "in use," the only way I could figure to capture the concept was to peg that number to a specific day, e.g., the day after publication of the act. However, the effect of this provision is that a hospital must turn away patients in excess of the number it had in occupancy on that particular day. The alternative is to refer to the approved bed capacity of the hospital.

****NOTE: Note the term "obligate for capital expenditure." It mirrors s. 150.93 (3), stats., currently, and ties into the definition of "capital expenditure" under s. 150.01 (6), stats.; is this what you want?

(b) Expand an existing service of the hospital, unless the primary purpose of the expanded service is to provide free or reduced-cost health or dental care to individuals who are determined by the department to be underserved or to have low income.

(c) Engage in construction, except for the purpose of any of the following:

1. Consolidation of hospitals, if the consolidation does not increase the ~~approved bed capacities~~ ^{number of available beds} of the hospitals.

****NOTE: See 1st NOTE under par. (a).

1 2. As a response to damage caused by a natural disaster, including an
2 earthquake, or by a fire.

3 3. To eliminate a threat to the safety to patients, staff, or the general public that
4 is due to a physical defect of the hospital.

5 (d) 1. Before January 1, 2003, engage in upgrading renovation, except for
6 routine maintenance or maintenance to eliminate a threat to the safety of patients,
7 staff, or the general public. *that is due to a physical defect of the hospital*

8 2. If a hospital seeks an opinion from the department concerning whether a
9 proposed project of the hospital violates subd. 1., the department shall issue the
10 opinion. If the hospital, after completing the project, is found to be in violation of
11 subd. 1., the violation does not affect the status of the hospital's approval under s.
12 50.35 unless the actual, completed project differs materially from the proposed
13 project for which the department issued an opinion.

14 (3) As a condition of hospital approval under s. 50.35, a hospital shall do all of
15 the following:

16 (a) If the hospital is certified under s. 49.45 (2) (a) 11. as a provider of medical
17 assistance or certified as a provider of services under medicare, as defined in s. 49.45

18 (3) (L) 1. b., or if the hospital obtains this certification, accept as patients individuals
19 who are medical assistance recipients or medicare beneficiaries.

20 (b) Operate a 24-hour emergency room or *for a hospital approved under s. 50.35 as of the effective date of this paragraph.... [revisor inserts date]*
21 another hospital with a 24-hour emergency room under which that other hospital
22 consents to receive patients in need of emergency care that are transferred to it by
23 the hospital that does not operate a 24-hour emergency room. This paragraph does

~~****NOTE: Does this apply to asc's?~~

1 not apply to a hospital that is an inpatient facility, as defined in s. 51.01 (10) or that
2 is certified under s. 49.45 (2) (a) 11. as a rehabilitation hospital.

3 (4) No person may, by or on behalf of an ambulatory surgery center, do any of
4 the following:

5 (a) Increase, or obligate for a capital expenditure to increase, the number of
6 occupied beds of the ambulatory surgery center that are occupied on the effective
7 date of this paragraph ... [revisor inserts date].

***NOTE: See the NOTE under sub. (2) (a)

***NOTE: Does DHFS approve the bed capacity of an ambulatory surgery center?
Note that this prohibition is not tied in to licensure or approval, because ambulatory
surgery centers are not so regulated by DHFS. If you want some attendant punishment
for violation of the prohibition, please tell me what it would be.

INVEST
b-1
6

8 (a) Expand an existing service of the ambulatory surgery center unless the
9 primary purpose of the new service is to provide free or reduced-cost health or dental
10 care to individuals who are determined by the department to be underserved or to
11 have low income.

***NOTE: See NOTE under sub. (2) (b).

12 (b) Engage in construction, except for the purposes of any of the following:

13 1. As a response to damage caused by a natural disaster, including an
14 earthquake, or by a fire.

15 2. To eliminate a threat to the safety of patients, staff, or the general public that
16 is due to a physical defect of the ambulatory surgery center.

17 (c) 1. Before January 1, 2003, engage in upgrading renovation, except for
18 routine maintenance or maintenance to eliminate a threat to the safety of patients,
19 staff, or the general public.

that is due to a physical defect of
the ambulatory surgery center

20 2. If an ambulatory surgery center seeks an opinion from the department
21 concerning whether a proposed project of the ambulatory surgery center violates

Opinion of the department is that the proposed project does not violate subd. 1., an

1 subd. 1., the department shall issue the opinion. If the ambulatory surgery center,
2 after completing the project, ~~is~~ ^{may not be} found to be in violation of subd. 1. ~~the~~ ^{she} unless
3 the actual, completed project differs materially from the proposed project for which
4 the department issued ~~an~~ ^{the} opinion.

***NOTE: Does this apply to any case?

***NOTE: What is the punishment that must be described in subd. 2?

INSERT 7-5

5 ~~(6)~~ ⁽⁶⁾ The department shall promulgate as a rule a definition of "upgrading
6 renovation," for the purposes of subs. (2) (d) 1. and (4) ~~(d)~~ ^(c) 1.

7 ~~(7)~~ ⁽⁷⁾ The department may, under s. 50.35, revoke or suspend approval for a
8 hospital that violates sub. (2) or fails to comply with sub. (3) or 2002 Wisconsin Act
9 (this act), section 9123 (5qr), after giving reasonable notice, a fair hearing, and,
10 if appropriate as determined by the department, a reasonable opportunity to comply.

11 **SECTION 336rf.** 150.935 (2) (d) 1. of the statutes, as created by 2001 Wisconsin
12 Act (this act), is amended to read:

13 150.935 (2) (d) 1. ~~Before January 1, 2003, engage~~ Engage in upgrading
14 renovation, as defined by rule by the department, except for routine maintenance or
15 maintenance to eliminate a threat to the safety of patients, staff, or the general
16 public." *that is due to physical defect of the hospital* ✓

17 **SECTION 336rh.** 150.935 (4) ~~(d)~~ ^(c) 1. of the statutes, as created by 2001 Wisconsin ✓
18 Act (this act), is amended to read: ^(c)

19 150.935 (4) ~~(d)~~ ^(c) 1. ~~Before January 1, 2003, engage~~ Engage in upgrading ✓
20 renovation, as defined by rule by the department, except for routine maintenance or
21 maintenance to eliminate a threat to the safety of patients, staff, or the general
22 public. *that is due to a physical defect of the ambulatory surgery center* ✓

1 SECTION 336rL. 150.935 (6) of the statutes, as created by 2001 Wisconsin Act
2 (this act), is amended to read:

3 150.935 (6) The department may, under s. 50.35, revoke or suspend approval
4 for a hospital that violates sub. (2) or fails to comply with sub. (3) ~~or 2002 Wisconsin~~
5 ~~Act (this act), section 9123 (5qr),~~ after giving reasonable notice, a fair hearing,
6 and, if appropriate as determined by the department, a reasonable opportunity to
7 comply.”

8 4. Page 358, line 15: after that line insert:

9 “(5qq) LIMITATIONS ON HOSPITALS AND AMBULATORY SURGERY CENTERS; RULES.

10 (a) The department of health and family services shall submit in proposed form
11 the rule required under section 150.935 (6) of the statutes, as created by this act, to
12 the legislative council staff under section 227.15 (1) of the statutes no later than the
13 first day of the 4th month beginning after the effective date of this paragraph.

14 (b) Using the procedure under section 227.24 of the statutes, the department
15 of health and family services may promulgate the rule required under section
16 150.935 (6) of the statutes, as created by this act, for the period before the effective
17 date of the rule submitted under paragraph (a), but not to exceed the period
18 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
19 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required
20 to provide evidence that promulgating a rule under this paragraph as an emergency
21 rule is necessary for the preservation of the public peace, health, safety, or welfare
22 and is not required to provide a finding of emergency for a rule promulgated under
23 this paragraph.

An ambulatory surgery center shall
and,
AND AMBULATORY SURGERY CENTERS
(CS)

1 (5qr) REQUIREMENTS OF HOSPITALS. As a condition of approval under section
2 50.35 of the statutes, as affected by this act, a hospital shall, within 60 days after the
3 effective date of this subsection, apply under section 49.45 (2) (a) 11. of the statutes
4 for certification as a provider of medical assistance and apply for certification as a
5 provider of services under medicare, as defined under section 49.45 (3) (L) 1. b. of the
6 statutes.”

Stat:
leave as
typed

7 5. Page 435, line 24: after that line insert:

8 “(2q) LIMITATION ON UPGRADING RENOVATIONS. The creation of section 150.935 (2)
9 (d) 1. and ~~(4)~~ (c) 1. of the statutes first applies to upgrading renovation in which a ✓
10 hospital or ambulatory surgery center is engaged on the effective date of this
11 subsection.”

12 6. Page 446, line 6: after that line insert:

13 “(3q) LIMITATIONS ON HOSPITALS AND AMBULATORY SURGERY CENTERS. (a) The
14 treatment of section 50.35 (by SECTION 148h) of the statutes and the amendment of
15 section 150.935 ~~(4)~~ of the statutes take effect on the first day of the 3rd month ✓
16 beginning after publication.

17 (b) The amendment of section 150.935 (2) (d) 1. and ~~(4)~~ (c) 1. of the statutes ✓
18 takes effect on January 1, 2003.

19 (c) The treatment of section 150.935 (3) (b) of the statutes takes effect on the
20 first day of the 9th month beginning after publication.”

21 (END)

INSERT 6-7-5

1 2. As a response to damage caused by a natural disaster, including an
2 earthquake, or by a fire.

3 3. To eliminate a threat to the safety to patients, staff, or the general public that
4 is due to a physical defect of the hospital.

5 (d) 1. Before January 1, 2008, engage in upgrading renovation, except for
6 routine maintenance or maintenance to eliminate a threat to the safety of patients,
7 staff, or the general public.

8 2. If a hospital seeks an opinion from the department concerning whether a
9 proposed project of the hospital violates subd. 1., the department shall issue the
10 opinion. If the hospital, after completing the project, is found to be in violation of
11 subd. 1., the violation does not affect the status of the hospital's approval under s.
12 50.35 unless the actual, completed project differs materially from the proposed
13 project for which the department issued an opinion.

14 (3) As a condition of hospital approval under s. 50.35, a hospital shall do all of
15 the following:

16 (5) ^{an} ambulatory surgery center
~~ambulatory surgery center~~
17 (3) If ~~the hospital~~ is certified under s. 49.45 (2) (a) 11. as a provider of medical
18 assistance or certified as a provider of services under medicare, as defined in s. 49.45

19 (3) (L) 1. b., or if ~~the hospital~~ obtains this certification, accept as patients individuals
20 who are medical assistance recipients or medicare beneficiaries.

the ambulatory surgery center shall

NOTE: Does this apply to asc's?

20 (b) Operate a 24-hour emergency room or have in effect an agreement with
21 another hospital with a 24-hour emergency room under which that other hospital
22 consents to receive patients in need of emergency care that are transferred to it by
23 the hospital that does not operate a 24-hour emergency room. This paragraph does



State of Wisconsin
2001 - 2002 LEGISLATURE
January 2002 Special Session

LRBb2974/1
DAK:cs:rs

SCC:.....Engel - CN5565, Hospital and ambulatory surgery center
limitations and requirements

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 47, line 25: after that line insert:

3 "SECTION 148g. 50.35 of the statutes is amended to read:

4 **50.35 Application and approval.** Application for approval to maintain a
5 hospital shall be made to the department on forms provided by the department. On
6 receipt of an application, the department shall, except as provided in this section and
7 s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet
8 the requirements established by the department. Except as provided in s. 50.498,
9 this approval shall be in effect until, for just cause and in the manner herein
10 prescribed, it is suspended or revoked. The certificate of approval may be issued only

1 for the premises and persons or governmental unit named in the application and is
2 not transferable or assignable. The department shall withhold, suspend or revoke
3 approval for a violation of s. 150.935 (2) or a failure to comply with s. 150.935 (3) or
4 165.40 (6) (a) 1. or 2. or 2001 Wisconsin Act (this act), section 9123 (5qr), but,
5 except as provided in s. 50.498, otherwise may not withhold, suspend or revoke
6 approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules
7 and standards adopted by the department after giving a reasonable notice, a fair
8 hearing and a reasonable opportunity to comply. Failure by a hospital to comply with
9 s. 50.36 (3m) shall be considered to be a substantial failure to comply under this
10 section. After the effective date of this section [revisor inserts date], the
11 department may not issue an initial certificate of approval except for a critical access
12 hospital that is converted from a previously-approved hospital.”.

13 **SECTION 148h.** 50.35 of the statutes, as affected by 2001 Wisconsin Act (this
14 act), is amended to read:

15 **50.35 Application and approval.** Application for approval to maintain a
16 hospital shall be made to the department on forms provided by the department. On
17 receipt of an application, the department shall, except as provided in this section and
18 s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet
19 the requirements established by the department. Except as provided in s. 50.498,
20 this approval shall be in effect until, for just cause and in the manner herein
21 prescribed, it is suspended or revoked. The certificate of approval may be issued only
22 for the premises and persons or governmental unit named in the application and is
23 not transferable or assignable. The department shall withhold, suspend or revoke
24 approval for a violation of s. 150.935 (2) or a failure to comply with s. 150.935 (3) or
25 165.40 (6) (a) 1. or 2. or 2001 Wisconsin Act (this act), section 9123 (5qr), but,

1 MORATORIUM ON CONSTRUCTION
2 -OF HOSPITAL BEDS AND AMBULATORY
3 SURGERY CENTER LIMITATIONS

4 **SECTION 336q.** 150.93 (1) of the statutes is renumbered 150.935 (1).

5 **SECTION 336r.** 150.93 (2) to (5) of the statutes are repealed.

6 **SECTION 336rd.** 150.935 of the statutes is created to read:

7 **150.935 Limitations on hospitals and ambulatory surgery centers. (2)**

8 As a condition of hospital approval under s. 50.35, no person may, by or on behalf of
9 a hospital, do any of the following:

10 (a) Increase, or obligate for a capital expenditure to increase, the number of
11 approved beds of the hospital that are available on the effective date of this
12 paragraph [revisor inserts date].

13 (b) Expand an existing service of the hospital, unless the primary purpose of
14 the expanded service is to provide free or reduced-cost health or dental care to
15 individuals who are determined by the department to be underserved or to have low
16 income.

17 (c) Engage in construction, except for the purpose of any of the following:

18 1. Consolidation of hospitals, if the consolidation does not increase the number
19 of available beds of the hospitals.

20 2. As a response to damage caused by a natural disaster, including an
21 earthquake, or by a fire.

22 3. To eliminate a threat to the safety to patients, staff, or the general public that
23 is due to a physical defect of the hospital.

1 (d) 1. Before January 1, 2003, engage in upgrading renovation, except for
2 routine maintenance or maintenance to eliminate a threat to the safety of patients,
3 staff, or the general public that is due to a physical defect of the hospital.

4 2. If a hospital seeks an opinion from the department concerning whether a
5 proposed project of the hospital violates subd. 1., the department shall issue the
6 opinion. If the hospital, after completing the project, is found to be in violation of
7 subd. 1., the violation does not affect the status of the hospital's approval under s.
8 50.35 unless the actual, completed project differs materially from the proposed
9 project for which the department issued an opinion.

10 (3) As a condition of hospital approval under s. 50.35, a hospital shall do all of
11 the following:

12 (a) If the hospital is certified under s. 49.45 (2) (a) 11. as a provider of medical
13 assistance or certified as a provider of services under medicare, as defined in s. 49.45
14 (3) (L) 1. b., or if the hospital obtains this certification, accept as patients individuals
15 who are medical assistance recipients or medicare beneficiaries.

16 (b) Operate a 24-hour emergency room or, for a hospital approved under s.
17 50.35 as of the effective date of this paragraph [revisor inserts date], have in effect
18 an agreement with another hospital with a 24-hour emergency room under which
19 that other hospital consents to receive patients in need of emergency care that are
20 transferred to it by the hospital that does not operate a 24-hour emergency room.
21 This paragraph does not apply to a hospital that is an inpatient facility, as defined
22 in s. 51.01 (10) or that is certified under s. 49.45 (2) (a) 11. as a rehabilitation hospital.

23 (4) No person may, by or on behalf of an ambulatory surgery center, do any of
24 the following:

1 (a) Expand an existing service of the ambulatory surgery center unless the
2 primary purpose of the new service is to provide free or reduced-cost health or dental
3 care to individuals who are determined by the department to be underserved or to
4 have low income.

5 (b) Engage in construction, except for the purposes of any of the following:

6 1. As a response to damage caused by a natural disaster, including an
7 earthquake, or by a fire.

8 2. To eliminate a threat to the safety of patients, staff, or the general public that
9 is due to a physical defect of the ambulatory surgery center.

10 (c) 1. Before January 1, 2003, engage in upgrading renovation, except for
11 routine maintenance or maintenance to eliminate a threat to the safety of patients,
12 staff, or the general public that is due to a physical defect of the ambulatory surgery
13 center.

14 2. If an ambulatory surgery center seeks an opinion from the department
15 concerning whether a proposed project of the ambulatory surgery center violates
16 subd. 1., the department shall issue the opinion. If the opinion of the department is
17 that the proposed project does not violate subd. 1., an ambulatory surgery center,
18 after completing the project, may not be found to be in violation of subd. 1. unless the
19 actual, completed project differs materially from the proposed project for which the
20 department issued the opinion.

21 (5) If an ambulatory surgery center is certified under s. 49.45 (2) (a) 11. as a
22 provider of medical assistance or certified as a provider of services under medicare,
23 as defined in s. 49.45 (3) (L) 1. b., or if an ambulatory surgery center obtains this
24 certification, the ambulatory surgery center shall accept as patients individuals who
25 are medical assistance recipients or medicare beneficiaries.

1 **(6)** The department shall promulgate as a rule a definition of “upgrading
2 renovation,” for the purposes of subs. (2) (d) 1. and (4) (c) 1.

3 **(7)** The department may, under s. 50.35, revoke or suspend approval for a
4 hospital that violates sub. (2) or fails to comply with sub. (3) or 2002 Wisconsin Act
5 (this act), section 9123 (5qr), after giving reasonable notice, a fair hearing, and,
6 if appropriate as determined by the department, a reasonable opportunity to comply.

7 **SECTION 336rf.** 150.935 (2) (d) 1. of the statutes, as created by 2001 Wisconsin
8 Act (this act), is amended to read:

9 150.935 (2) (d) 1. ~~Before January 1, 2003, engage Engage~~ in upgrading
10 renovation, ~~as defined by rule by the department,~~ except for routine maintenance or
11 maintenance to eliminate a threat to the safety of patients, staff, or the general
12 public that is due to a physical defect of the hospital.”

13 **SECTION 336rh.** 150.935 (4) (c) 1. of the statutes, as created by 2001 Wisconsin
14 Act (this act), is amended to read:

15 150.935 (4) (c) 1. ~~Before January 1, 2003, engage Engage~~ in upgrading
16 renovation, ~~as defined by rule by the department,~~ except for routine maintenance or
17 maintenance to eliminate a threat to the safety of patients, staff, or the general
18 public that is due to a physical defect of the ambulatory surgery center.

19 **SECTION 336rL.** 150.935 (7) of the statutes, as created by 2001 Wisconsin Act
20 (this act), is amended to read:

21 150.935 (7) The department may, under s. 50.35, revoke or suspend approval
22 for a hospital that violates sub. (2) or fails to comply with sub. (3) ~~or 2002 Wisconsin~~
23 ~~Act (this act), section 9123 (5qr),~~ after giving reasonable notice, a fair hearing,
24 and, if appropriate as determined by the department, a reasonable opportunity to
25 comply.”

1 **4.** Page 358, line 15: after that line insert:

2 “(5qq) LIMITATIONS ON HOSPITALS AND AMBULATORY SURGERY CENTERS; RULES.

3 (a) The department of health and family services shall submit in proposed form
4 the rule required under section 150.935 (6) of the statutes, as created by this act, to
5 the legislative council staff under section 227.15 (1) of the statutes no later than the
6 first day of the 4th month beginning after the effective date of this paragraph.

7 (b) Using the procedure under section 227.24 of the statutes, the department
8 of health and family services may promulgate the rule required under section
9 150.935 (6) of the statutes, as created by this act, for the period before the effective
10 date of the rule submitted under paragraph (a), but not to exceed the period
11 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
12 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required
13 to provide evidence that promulgating a rule under this paragraph as an emergency
14 rule is necessary for the preservation of the public peace, health, safety, or welfare
15 and is not required to provide a finding of emergency for a rule promulgated under
16 this paragraph.

17 (5qr) REQUIREMENTS OF HOSPITALS AND AMBULATORY SURGERY CENTERS. An
18 ambulatory surgery center shall and, as a condition of approval under section 50.35
19 of the statutes, as affected by this act, a hospital shall, within 60 days after the
20 effective date of this subsection, apply under section 49.45 (2) (a) 11. of the statutes
21 for certification as a provider of medical assistance and apply for certification as a
22 provider of services under medicare, as defined under section 49.45 (3) (L) 1. b. of the
23 statutes.”.

24 **5.** Page 435, line 24: after that line insert:

