

Chapter HRSC 4

HEARINGS AND PRACTICE

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HRSC 4.01 Definitions. (1) **INITIATING PARTIES.** For the purpose of describing parties to the commission's proceedings:

(a) "Applicant" means a hospital that submits an application for a rate change.

(b) "Complainant" means a person who submits a complaint to the commission under s. HRSC 4.05.

(c) "Petitioner" means a person who petitions the commission to commence a rate review under s. HRSC 4.05.

(2) **RESPONDING PARTIES.** For the purpose of describing parties to the commission's proceedings:

(a) "Objector" means a party to a review under s. 54.07 (2), Stats., who objects to a hospital's application for a rate change.

(b) "Respondent" means a hospital that is the subject of a petition or complaint under s. HRSC 4.05.

(c) "Supporter" means a party to a review under s. 54.07 (2), Stats., who supports a hospital's application for a rate change.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85.

HRSC 4.03 Form of applications and requests to commence a rate review. Each application for a rate change or request to commence a rate review shall be submitted by the applicant or petitioner in triplicate form. Each application or request shall be in writing, stating its object, including a concise statement of the facts supporting this object and using the format specified in s. HRSC 1.09 (2). The chief executive officer of an applicant, the petitioner or that person's agent shall sign the form.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85.

HRSC 4.05 Other requests to investigate complaints or commence rate review. (1) **COMPLAINTS.** (a) Any person may request the commission to investigate a complaint. The commission may handle complaints informally under par. (b) or formally under par. (c).

(b) The commission may investigate complaints on its own or may handle complaints using other informal methods such as correspondence,

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referral to other regulatory agencies or dealing with the complaint at a rate review.

(c) 1. To initiate a hearing, the commission shall require the complainant to submit a petition stating specific facts of which the person has personal knowledge and other facts available by information and belief that show good cause to review or investigate the matter. The complainant shall sign an oath stating that the information provided is true to the best of his or her knowledge, under the seal of a notary public. The commission may conduct a hearing regardless of whether it initiates the informal process under par. (b).

2. The commission may commence a hearing if it decides that the complaint concerns a substantial problem it is capable of resolving in any of the following areas:

a. Determining whether a hospital has misstated any material fact at a prior rate-setting proceeding and whether, under s. 54.17 (4) (b), Stats., the commission should reduce rates it has established.

b. Determining whether a hospital has charged any payer an amount exceeding the rates established under s. 146.60 or ch. 54, Stats., or has violated any order of the commission.

c. Determining whether a hospital has failed to reimburse a payer for a service determined medically unnecessary or inappropriate, in violation of s. 54.25 (2), Stats.

(2) COMMENCING RATE REVIEW. Any person may request the commission to review a hospital's rates on its own initiative under s. 54.07 (1), Stats. To initiate such a review, the person shall submit to the commission a petition stating specific facts of which the person has personal knowledge and other facts available by information and belief that show good cause to review the matter. The petitioner shall sign an oath stating that the information provided is true to the best of his or her knowledge, under the seal of a notary public. If the petition concerns a substantial problem that the commission is capable of resolving it may respond by conducting a hearing under sub. (3) or by commencing a rate review.

(3) PROCEDURE FOR CONDUCTING HEARINGS. Within 5 days after receiving a petition under sub. (1) or (2) the commission shall forward a copy to the concerned hospital. If the commission decides to hold a hearing concerning a complaint filed under sub. (1) or concerning the merits of a request to commence rate review under sub. (2), it may schedule the time and place for a hearing. The hearing shall be conducted using the procedures specified for hearings under s. 54.15 (3), Stats., and in accordance with applicable rules of this chapter.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; am. (1) (c) 1. and 2. intro. and (3), Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.06 Trade secrets. (1) INITIAL REQUEST FOR PROTECTION. Any party may request that public access to information it submits to the commission be withheld by requesting trade secret protection simultaneously with its submission of information. In its request the party shall specify that portion of a document or other information in need of protection and shall explain why the information needs protection. Upon receiving such a request, the commission shall segregate the information in a separate file that is not open to other parties or the general public.

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The commission shall include in the file where that information would otherwise be stored a statement identifying the general subject matter of the information being protected and indicating that, on the request of any person interested in inspecting the information, the commission will hold a meeting under sub. (2) to determine if the information constitutes a trade secret and requires continued protection or if the information should be disclosed. If the protected information was submitted as part of a rate review and, prior to the date when the opportunity to request a settlement conference expires, the hospital whose rates are under review or a party to the review requests a meeting under sub. (2), the commission shall hold the meeting before it issues an order setting the hospital's rates or conducts a hearing on the rate review. If the hospital or a party to the review submits the request for a meeting under sub. (2) on or after the date when the opportunity to request a settlement conference expires, or if any other person submits a request for a meeting, the commission is not required to conduct the meeting before issuing a rate-setting order. At this meeting and at any hearing held under sub. (3) the presiding officer may impose conditions on inspection or otherwise protect the information under consideration.

(2) **INITIAL MEETING.** At a meeting scheduled under sub. (1) the commission shall consider the need for trade secret protection and whether to refer the issue to a public hearing. The commission may decide the question of trade secret protection at the meeting or, if it needs to hear testimony or receive evidence on the request, may defer action until it conducts a hearing. Unless the commission schedules a hearing under sub. (3) within 5 days after concluding this meeting, its decision at the meeting is a final decision.

(3) **HEARING.** Any hearing concerning the need for trade secret protection shall be conducted using the procedures specified for hearings under s. 54.15 (3), Stats., and in accordance with applicable rules of this chapter.

(4) **NOTICE.** In its notice of proceedings issued under s. HRSC 4.08 the commission shall identify the general subject matter involved at an initial meeting or hearing under sub. (2) or (3), without compromising the confidentiality of the information concerned, in order to solicit specific comments about matters such as:

- (a) The extent that the information is known by employees of the requester or by outsiders.
- (b) The extent that measures have been taken to guard the information's secrecy.
- (c) The value of the information to its owner and to competitors.
- (d) The effort expended in developing the information.
- (e) The ease with which others could duplicate or acquire the information.
- (f) The likelihood that the information would be created in the normal course of business even without trade secret protection.
- (g) The public interest in revealing or not revealing this information.

(5) **BURDEN OF PROOF.** The person requesting trade secret protection has the burden of establishing the need to withhold public access under s.

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19.36 (5), Stats., on the grounds that the information involved is a trade secret.

(6) **INTERIM CONFIDENTIAL STATUS.** If the commission reaches a final decision to reveal information for which protection is requested under this section, it shall withhold public access for an additional 5 days in order to allow potentially aggrieved parties to seek judicial review under s. 227.15, Stats.

Note: Current law defining a trade secret, as outlined by the Wisconsin Supreme Court in *Wisconsin Electric Power Co. v. PSC*, 110 Wis. 2d 530 (1982), *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672 (1965) and *Carroon and Black-Rutters v. Hosh*, 109 Wis. 2d 290 (1982), relies on factors listed in Restatement, 4 *Torts* s. 757, comment b. This rule creates a procedure the commission can use to protect some types of business information of a hospital or other party to a rate review. On request, the commission will determine if the protected information fits within the factors defining a trade secret, so that the information should be considered a trade secret and be permanently withheld from public inspection. For example, a hospital may request the commission to protect information about its current HMO or PPO discount so it will not be open to the public under the public records law, ss. 19.35 and 19.36, Stats. The procedure is intended to be completed within the strict time constraints for reviewing rates that are specified by statute.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; am. (1) and r. and recr. (3), Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.07 Copies of records. (1) COPIES ISSUED TO PARTIES. At the time it issues an order, the commission shall provide each party or counsel to the party involved with a copy of the order without charge.

(2) **COPIES AVAILABLE TO OTHERS.** Except as provided in sub. (1), the commission shall provide copies of transcripts or other records on request if the requester pays an amount determined by the commission.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; am. Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.08 Notice of proceedings. The commission shall provide notice to the public of its proceedings, including any general meeting, settlement conference or hearing under s. 54.15 (1) or (3), Stats., or any meeting or hearing to review a request for trade secret protection under s. HRSC 4.06. The commission shall also notify each party to a review under s. HRSC 3.013 (2) of a pending settlement conference, meeting concerning trade secret protection under s. HRSC 4.06 or hearing. Each of these proceedings is a public meeting under ss. 19.81 to 19.98, Stats. The commission may waive the notice provisions of this section as provided in ss. 19.84 and 19.85, Stats.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; am. Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.085 Staff recommendations. If a hospital materially changes its data more than 20 days after submitting a rate request, commission staff may refuse to accept the data, as provided in s. HRSC 2.01 (2), suggest the hospital request approval from the commission to withdraw and re-submit the rate request, or revise its rate recommendations. After the hospital files a request for a hearing, commission staff may only revise its rate recommendations if the hospital materially changes its data after the date of the request.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.09 General procedures for settlement conferences and hearings. (1) SCHEDULE, LOCATION. The commission shall establish a schedule for settlement conferences and hearings. These proceedings shall be con-

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ducted at the commission's offices unless the commission designates a different location.

(2) **CHANGING THE TIME OR PLACE OF A PROCEEDING; ADJOURNMENTS.** The presiding officer of a settlement conference or hearing may change the time or place established for the proceeding as needed. Persons who request such a change shall deliver a copy of their request to all other parties to the proceeding and shall inform the presiding officer when and upon whom these copies were served. After a settlement conference or hearing commences, adjournment is at the discretion of the presiding officer.

(4) **CONTEMPT.** Contemptuous conduct at any proceeding of the commission is grounds for exclusion from the proceeding.

(5) **CONSOLIDATION OF PROCEEDINGS.** The commission may consolidate hearings or other proceedings that concern related questions of law and fact, subject to the limitation that it shall determine the rates of each hospital independently.

Note: Section 54.17 (2), Stats., requires the commission to determine each hospital's rates independently.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; am. (1), renum. (2) and (3) (a) and (b) to be HRSC 4.10 and 4.11 (3) and (b) and am., (2) renum. from HRSC 4.19, r. (3) (c) and (6), Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.10 Conducting settlement conferences. (1) **REQUESTING A SETTLEMENT CONFERENCE.** A hospital may request a settlement conference before the commission to contest any part of commission staff rate recommendations under s. 54.13 (2), Stats. Any hospital seeking to initiate a settlement conference shall submit the request to the commission within 10 days after the rate recommendations are submitted. This request shall be in writing and shall specify the points of dispute with the staff rate recommendations that the hospital intends to discuss at the settlement conference.

(2) **PARTICIPATION IN A SETTLEMENT CONFERENCE.** If any party submits any written material to the commission in support of its position at a settlement conference, it shall simultaneously transmit a copy of the material to every other party to the rate review.

(3) **CONCLUDING A SETTLEMENT CONFERENCE.** A settlement conference is closed when, in the opinion of the presiding commissioner, all points of dispute have been resolved or clearly identified and defined as issues for a potential hearing.

History: Renum. from HRSC 4.09 (2) and am., cr. (3), Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.11 Conducting hearings. (1) **REQUESTING A HEARING.** No hospital may request a hearing under s. 54.15 (3), Stats., until after the conclusion of the settlement conference. Each request for a hearing under s. 54.15 (3), Stats., shall specify the points of dispute that the hospital intends to present as issues at the hearing. Only those points of dispute that arise solely as a result of the staff rate recommendations or any revision to the rate recommendations may be the subject matter of a hearing under s. 54.15 (3), Stats.

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(2) **PREHEARING PROCEEDINGS.** (a) The presiding officer at a hearing may conduct a preliminary proceeding for the purpose and in the manner specified for prehearing proceedings under s. 227.07 (4), Stats.

(b) With the exception of rebuttal materials, each party shall submit 5 copies to the commission of the names of witnesses to be called and the exhibits to be introduced and one copy to each other party to the hearing. These materials are subject to exclusion from the hearing if not submitted at least 3 working days, as defined in s. 227.01 (12), Stats., prior to the commencement of the hearing, unless the party can show good cause for failing to comply with this paragraph.

(3) **OPENING A HEARING.** (a) At hearings under s. 54.15 (3), Stats., the presiding officer shall open the hearing and make a concise statement of its scope and purposes. Appearances shall be entered on the record and parties may then make motions and opening statements in accordance with the practice in state circuit courts. Opening statements shall be confined to a brief summary of the evidence to be offered and a statement of the ultimate legal points relied upon.

(b) At hearings under s. 54.15 (3), Stats., parties may make statements off the record with the permission of the presiding officer. Any pertinent statements made off the record may be summarized by the presiding officer on the record. Arguments on objections to the receipt of evidence or motions to strike need not be recorded, although the legal reasons for the objection or motion shall be recorded.

(4) **REPETITIVE EVIDENCE.** The presiding officer at a hearing may limit the introduction of evidence, the number of witnesses who appear and the length of arguments and testimony in order to exclude immaterial, irrelevant or unduly repetitious testimony.

Note: Section 227.08 (1), Stats., requires the exclusion of immaterial, irrelevant or unduly repetitious testimony at contested case hearings. This rule also allows the commission to limit the accumulation of such unnecessary evidence at other commission proceedings.

(5) **FILING BRIEFS.** The presiding commissioner may allow the commission staff and any party to an informal hearing to file written arguments pertaining to issues at the hearing. Each party who files a brief shall submit 5 copies to the commission and one copy to each party.

(6) **INFORMAL HEARINGS AND CONTESTED CASE HEARINGS.** (a) The commission shall conduct a class 1 contested case hearing under s. 54.15 (3) (c), Stats., in place of an informal hearing on the request of a hospital.

(b) If a hearing has been scheduled, is being held or has been held in response to a request under s. 54.15 (3), Stats., the points of disagreement between the hospital, parties to the review and the commission staff that are unresolved at the settlement conference constitute the subject matter of that hearing and may not be the subject matter of an additional contested case proceeding under s. 54.15 (6), Stats.

History: Cr. (1), (2), (5) and (6), (3) and (4) renum. from HRSC 4.09 (3) and 4.13 (3) and am. (3), Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.13 Witnesses. (1) **POWER TO SUBPOENA WITNESSES.** The presiding officer at a settlement conference or hearing may issue subpoenas to compel the attendance of witnesses at the proceeding or at discovery proceedings, either on the presiding officer's own motion or at the request
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of a party to the proceeding. Witnesses who are subpoenaed may, prior to the time specified for compliance or within 10 days after service of the subpoena, whichever occurs first, request that the presiding officer or the commission quash or modify the subpoena. Each request to quash or modify a subpoena shall be accompanied by a brief statement in support of the witness's position.

(2) REIMBURSEMENT FOR APPEARANCE. (a) Witnesses who are subpoenaed on the presiding officer's own motion are eligible for a reimbursement of fees and mileage to the extent authorized under s. 814.67 (1) (a) and (c) and (2), Stats. Witnesses who are subpoenaed at the request of any other party are eligible for this reimbursement by the state only if the presiding officer finds the testimony presented to be significant to the proceeding.

(b) Witnesses eligible for reimbursement under par. (a) may obtain voucher blanks from the presiding officer or from the commission's secretary.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; renum. (3) to be HRSC 4.11 (4), Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.15 Preserving testimony and discovery of evidence. Commission staff or any party to a contested case hearing under s. 64.15 (3) (c) or (6), Stats., may preserve testimony and obtain discovery as provided in ch. 804, Stats.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85.

HRSC 4.16 Appearances. (1) APPEARANCES BY PARTIES. Any party to a rate review seeking to participate in a settlement conference or hearing and any complainant, petitioner or respondent seeking to participate in an investigation under s. HRSC 4.05 shall either:

(a) Appear in person, giving his or her name and address and that of any person he or she represents and explaining the capacity in which he or she is representing that person; or

(b) File a notice of participation with all parties prior to the commencement of the proceeding that contains the information required under par. (a).

Note: As required in ss. 19.35 and 19.36, Stats., the open records statutes, the commission will provide participants in its proceedings with a list of other parties on request.

(2) APPEARANCES BY STAFF. Members of the commission staff may participate in any settlement conference, hearing or other proceeding in an advisory role to discover and, if necessary, present information pertinent to the issues under consideration. Participation by staff does not constitute an appearance in support of or opposition to the position of any party and does not constitute the assumption of an adversarial role as a party to the proceeding.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; renum. from HRSC 4.11, Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.17 Briefs and oral arguments at hearings. History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; r. Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.19 Changing the time or place of a proceeding; adjournment. History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; renum. to be HRSC 4.09 (2), Register, May, 1986, No. 365, eff. 6-1-86.

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HRSC 4.21 Concluding a settlement conference or hearing. History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; r. Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.23 Exceptions. To the extent authorized by ch. 54, Stats., the commission may waive its rules prescribing the process of participating in its proceedings as needed to gain additional information of reasonable probative value that a person would otherwise be unable to provide.

Note: Section HRSC 4.23 allows the commission to waive its procedural rules in certain situations. For example, this rule would authorize the commission to accept a petition to commence a rate review even though the form of the petition does not meet every requirement under ss. HRSC 1.09 (2) and 4.03, if the petition reveals a significant problem and the underlying facts could not otherwise be provided by the petitioner. On the other hand, this rule does not allow the commission to waive procedural requirements that are enumerated in ch. 54, Stats. This rule would not authorize waiver of the requirement in s. 54.07 (2), Stats., which specifies that persons who wish to become parties to a rate review must inform the commission within 30 days after notice of the rate review is published in a newspaper.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85; am. Register, May, 1986, No. 365, eff. 6-1-86.

HRSC 4.25 Corrections. The commission may, without reopening a rate review or commencing a subsequent rate review, correct clerical errors in its rate-setting orders by submitting a revised order to each party to the rate review. The commission may adjust rates established in its order as needed to correct clerical errors.

History: Cr. Register, December, 1984, No. 348, eff. 2-1-85.