

## HEALTH AND SOCIAL SERVICES

335  
HSS 123

## Chapter HSS 123

**CAPITAL EXPENDITURE REVIEW FOR HOSPITALS, OTHER ACUTE CARE FACILITIES AND HOME HEALTH AGENCIES**

HSS 123.01	Authority and purpose (p. 335)	HSS 123.22	New medical technology criteria (p. 401)
HSS 123.02	Applicability (p. 336)	HSS 123.23	Hospital merger projects criteria (p. 403)
HSS 123.03	Definitions (p. 336)	HSS 123.24	Magnetic resonance imaging criteria (p. 403)
HSS 123.04	Projects subject to approval by the department (p. 340)	HSS 123.25	Extracorporeal shock wave lithotripsy criteria (p. 404-3)
HSS 123.045	Exemptions from capital expenditure review (p. 344)	HSS 123.26	Organ transplant program criteria (p. 404-6)
HSS 123.05	Innovative medical technology (p. 345)	HSS 123.27	State medical facilities plan (p. 404-10)
HSS 123.06	Determination of reviewability (p. 346)	HSS 123.28	Relation of capital expenditure to rate-setting (p. 410-3)
HSS 123.08	Review process (p. 346-1)	HSS 123.29	Hospital capital budget report (p. 410-4)
HSS 123.09	Hearing process (p. 351)	HSS 123.30	Approved bed capacity (p. 410-5)
HSS 123.10	Progress reports and cost overruns (p. 356)	APPENDIX A	Designated health planning areas in Wisconsin
HSS 123.11	Civil forfeitures (p. 358)	APPENDIX B	Methodology for projecting utilization of computed tomography equipment
HSS 123.12	Validity of an approval (p. 359)	APPENDIX C	Methodologies for calculating bed need
HSS 123.13	Review criteria (p. 360)	APPENDIX D	Hospital service occupancy standards
HSS 123.14	Ambulatory surgery center criteria (p. 373)	APPENDIX E	Methodology for calculating proportionate share of excess beds by hospital
HSS 123.15	Cardiac program criteria (p. 376)	APPENDIX F	Methodology for determining the number of clinically-applicable MRI discharges
HSS 123.16	Perinatal service criteria (p. 382)		
HSS 123.17	End-stage renal disease service criteria (p. 386)		
HSS 123.18	Radiation therapy service criteria (p. 390)		
HSS 123.19	Computed tomography criteria (p. 394)		
HSS 123.20	Air ambulance transport service criteria (p. 395)		
HSS 123.21	Home health agency criteria (p. 398)		

Note: Chapter HSS 123 was created as an emergency rule effective January 1, 1984.

**HSS 123.01 Authority and purpose.** This chapter is promulgated under the authority of s. 150.03, Stats., to implement subchs. I and III of ch. 150, Stats. Its purpose is to provide definitions, standards and procedures to be used by the department to implement the capital expenditure review program for hospitals, ambulatory surgery centers and other acute health care facilities, and for home health agencies, established by subch. III of ch. 150, Stats. That program is primarily directed at containment of health care costs, but also seeks to promote orderly and cost-effective development of efficient health facilities and services and to prevent unwarranted expansion or replacement in the health care industry. The department recognizes that the scaling down of hospital operations, development of alternatives for excess bed capacity, conversion of services from inpatient to outpatient and the enhancement of price competition both among hospitals and between hospitals and health care providers not regulated by the department are ways in which cost containment may be achieved.

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

Register, January, 1987, No. 373

**HSS 123.02 Applicability.** (1) This chapter applies to any application declared complete by the department on or after the effective date of this chapter. Interim rules adopted under s. 2020 (11) (b) of 1983 Wisconsin Act 27 apply to projects declared complete prior to April 1, 1985.

(2) This chapter applies to any person who proposes to:

(a) Obligate for a capital expenditure, by or on behalf of a hospital, that exceeds either of the following limits, as adjusted by the department under s. 150.15, Stats., and s. HSS 123.04 (3);

1. \$1,000,000; or

2. \$1,500,000 in either of the following situations:

a. The project is limited to the conversion to a new use of part or all of an existing hospital building; or

b. The project is limited to the renovation of an existing hospital building. This subparagraph does not apply to new construction or building additions;

(b) Before July 1, 1986, undertake a substantial change in a health service;

(bm) On or after July 1, 1986, implement an organ transplant program, burn center, neonatal intensive care program, cardiac program or air transport services, or add psychiatric or chemical dependency beds;

(c) Obligate for an expenditure, by or on behalf of a hospital, independent practitioner, partnership, unincorporated medical group or service corporation for clinical medical equipment that exceeds \$1,000,000, as adjusted by the department under s. 150.15, Stats., and s. HSS 123.04 (3);

(d) Purchase or otherwise acquire a hospital;

(e) Add to a hospital's approved bed capacity; or

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

**History:** Cr. Register, March, 1985, No. 351, eff. 4-1-85; correction in (1) made under s. 13.93 (2m) (b) 14, Stats., Register, March, 1986, No. 363; am. (2), Register, January, 1987, No. 373, eff. 2-1-87.

**HSS 123.03 Definitions.** In this chapter:

(1) "Acquire" means to gain ownership but does not include consolidation or merger of 2 or more corporations each of which owns a currently approved and operating hospital if the consolidation or merger is without consideration. In this subsection, "consideration" means something of value given or promised that has the effect of making an agreement a legally enforceable contract.

(2) "Affected party" means the applicant, a health systems agency or other local planning agency, a governmental agency, another person providing similar services in the applicant's service area, the public to be served by the proposed project, a 3rd-party payer or any other person who the department determines is affected by an application for approval of a project.

2. Head scan with contrast, 1.25;
3. Head scan combined, 1.75;
4. Body scan without contrast, 1.50;
5. Body scan with contrast, 1.75;
6. Body scan combined, 2.75; and
7. Any spine scan, 3.00.

(c) "Residual salvage value" means the estimated amount for which the CT equipment can be sold, less any dismantling, removal or other costs, when retired from operation.

(d) "Scan" means the series of images or slices necessary for CT diagnosis of one anatomical area.

(3) **NEED FOR COMPUTED TOMOGRAPHY SERVICES.** The department shall not approve an application for fixed-base CT equipment unless the applicant demonstrates that:

(a) It has an approved bed capacity of at least 100 beds, or demonstrates to the department's satisfaction that there are clinical and financial justifications for waiving this requirement;

(b) Its 3-year projected utilization uses the methodology found in appendix B or another nationally recognized projection methodology. The applicant shall provide a rationale for all assumptions used in the utilization calculations. Justifiable modifications for changes in the inpatient to outpatient ratio may be used;

(c) The proposed equipment will perform 1,500 HECTs the first year of operation, 1,750 HECTs the second year of operation and 2,000 HECTs every year thereafter; and

(d) The projected charges for the proposed service and, where applicable, any physician charges are comparable to charges for similar services provided in similar settings.

(4) **MOBILE CT SERVICES.** (a) For an application relating to a mobile CT service, the applicant shall be the person acquiring the CT equipment.

(b) The applicant shall meet the standards under sub. (3) (b) to (d).

(5) **MULTIPLE SCANNER INSTALLATIONS.** The department shall not approve an application for additional CT equipment unless:

(a) The existing CT scanner performed 4,000 or more HECTs during the 12-month period preceding the date of application;

(b) The applicant provides the department with a 3-year utilization history of the existing scanner; and

(c) The applicant meets the standards under sub. (3) for the additional scanner.

(6) **EQUIPMENT REPLACEMENT.** (a) The department shall not approve an application for a replacement scanner unless the applicant demonstrates that:

1. The highest residual salvage value from among three bids for the replaced equipment has been obtained, and this value has been applied toward the purchase of new equipment; and

2. The original scanner will not be used by the applicant after the expiration of the 6-month transition period. The 6-month transition period shall begin on the operational date of the replacement scanner.

(b) The replaced original scanner shall be considered additional CT equipment for purposes of this review. An applicant using the original scanner after the replacement scanner's 6-month transition period has expired shall submit an application for its approval under this chapter.

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

**HSS 123.20 Air ambulance transport service criteria.** (1) **USE.** The criteria set out in this section shall be used by the department to review applications relating to air ambulance services. The applicable criteria of s. HSS 123.13 shall also be used in the review of applications subject to this section.

(2) **DEFINITION.** In this section, "air ambulance" means any aircraft qualifying as a small aircraft under federal aviation administration regulations or an aircraft operated under authority of 14 CFR 135 which is specifically designed, constructed, modified or equipped to be used for the transportation of an ill or injured person.

(3) **PLANNING AREAS.** For the purpose of this section, there shall be 2 planning areas in the state. Area I shall consist of health planning areas 2 and 4. Area II shall consist of health planning areas 1, 3, 5, 6, and 7.

(4) **NEED FOR AIR AMBULANCE TRANSPORT SERVICES.** The department shall not approve an application relating to an air ambulance service unless there is need for the service. To establish need, the applicant shall demonstrate that:

(a) The service is likely to make life-saving differences for patients with acute conditions;

(b) The annual number of patients in the planning area with illness or injury requiring intervention and transport and for whom transport time is crucial is sufficient to justify the service. In making that determination, the department shall consider:

1. The origin, by hospital or sending site, and diagnosis of the patients to be transported; and

2. The availability and adequacy of existing land transport services; and

(c) The air ambulance service will be cost-effective. In making this determination, the department shall consider:

1. The number and job functions of personnel to be assigned to the air ambulance transport service;

2. The direct and indirect costs of providing the service, including expenses of personnel, equipment, facilities and supportive services;

3. The applicant's ability to recover the costs of the service through collection of reasonable charges for the service; and

4. The cost of alternative means of emergency transport.

(5) **REQUIRED RESOURCES.** (a) The department shall not approve an application unless the applicant demonstrates that:

1. Appropriately trained personnel necessary for the treatment and transport of critically ill patients are available;

2. Appropriately trained personnel are available in the hospital to which patients are transported for the diagnosis and treatment of critically ill patients; and

3. Additional equipment and personnel resources required for licensure by the department as an ambulance under s. 146.50, Stats., and ch. H 20 [HSS 110] are available.

(b) If the applicant is not the hospital to which patients are transported, the applicant shall have a written agreement with the hospitals named in the application. The agreement shall state that the hospitals will:

1. Accept patients transported by the applicant; and

2. Provide, either singly or in combination, the personnel required under par. (a) 2.

(6) **COMPETING APPLICATIONS.** If applicants undergoing concurrent review meet the requirements of subs. (4) and (5), the department shall approve the project determined most feasible after a review of the following considerations:

(a) The number of specialized services in the project's receiving hospital or hospitals, such as a burn unit, pediatric intensive care unit and organ transplantation services;

(b) The intensive care capability of the project's receiving hospital or hospitals in terms of specialized units, number of beds and staffing;

(c) The specialized operating room capability of the receiving hospital or hospitals; and

(d) The higher intensity index as established under medicare, 42 USC 1395.

(7) **DEMONSTRATION PERIOD.** (a) Notwithstanding s. HSS 123.08 (9), the department may require, as a condition of approval, that a new air ambulance transport service operate for a demonstration period of at least one year but not more than 2 years.

(b) For the demonstration period:

1. The applicant shall agree to collect and maintain patient transport data and any other data required by the department in a form that can be evaluated by using acceptable statistical techniques;

2. The applicant shall establish a cost center for all direct costs associated with the service. The applicant shall also establish procedures which incorporate full cost accounting methods for allocating any indirect costs; and

3. The applicant shall obtain licensure as required under s. 146.50, Stats., and ch. H 20 [HSS 110].

(c) The department may recommend to the rate-setting authority that any direct costs not covered by the revenue generated by this service not be included in any request for approval of rate increases.

(d) An approval may be revoked if:

1. The conditions established under par. (b) have not been met; or
2. An evaluation of the data collected in par. (b) demonstrates the applicant's inability to meet the criteria in subs. (4) and (5).

(8) **NO ADDITIONAL APPROVALS.** Upon approval of an air ambulance service in a planning area, no additional applications for an air ambulance service in that planning area may be approved by the department unless the existing service has met the conditions of approval and the demonstration period is no longer in effect.

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

**HSS 123.21 Home health agency criteria. (1) USE.** The criteria set out in this section shall be used by the department to review applications for the operation of home health agencies. The applicable criteria of s. HSS 123.13 shall also be used in the review of applications subject to this section.

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

(a) "Acute care hospital discharges under age 65" means the number of discharges of patients under age 65 from hospitals to home or self-care or to home care provided by a home health agency as reported on the most recent hospital discharge survey conducted by the department.

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

(c) "Population age 65 and over" means the estimated population of persons age 65 and over not residing in institutions, as reported by the state department of administration.

(d) "Service area" means the counties designated by the applicant within which the proposed services are to be delivered.

(e) "Therapy service" means physical, occupational, speech or other therapy, medical social service, home health aide service, or any other medically oriented service except skilled nursing care.

(f) "Unduplicated admissions" means the number of patients served by a home health agency during a calendar year regardless of the number of times an individual was admitted to the agency during the year, as reported to the department.

(3) **NEED FOR SERVICES.** (a) *Unserviced population in need of service.* The department shall not approve an application for the operation of a home health agency unless the unserved population in need of service in the county as calculated under this paragraph exceeds 100 people. The department shall calculate the unserved population in need of service in a county by subtracting the population currently being served in the county from the population base in need of service in the county.

410-7 WISCONSIN ADMINISTRATIVE CODE

HSS 123

existing data collection mechanisms shall be used to obtain this information.

(b) Approved bed capacity shall be consistent with information on file with other bureaus in the department and survey results including the department's annual survey of hospitals.

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