

- b. In April for all counties located in health planning area #1;
- c. In July for all counties located in health planning areas #3, 4, and 7; and
- d. In October for all counties located in health planning areas #5 and 6.

2. The department shall request applications for new beds once from each planning area during the first half of each biennium. If the number of new beds approved for an area is less than the planning area's adjusted allotment, a second request for applications may be made during the second half of the biennium according to the schedule in par. (a).

(b) *Replacement beds.* The department shall annually accept applications to replace beds in a planning area which have been de-licensed but which were not closed under a medical assistance waiver or which were not replaced by CBRF beds which converted to nursing home licensure in order to retain medical assistance certification. Application shall be made according to the schedule in par. (a).

(c) *Nursing home beds converted to FDD beds.* The following provisions apply to applications for conversion to an FDD under s. HSS 122.02 (2) (a) and (c):

1. Applications that meet all applicable review criteria but do not receive approval due to bed limits imposed under s. HSS 122.04 (1) (b) 2. a. shall be automatically accepted for review under any subsequent request for applications without additional application fee unless the application has been substantially modified.

2. The department shall request applications at least once between January 1, 1988 and December 31, 1989.

3. Upon application to the department, the department may approve the operation of a distinct part of a nursing home as an FDD for a period of time not to exceed 4 years. Renewal of an approval initially granted under this subsection may be granted for a period of time not to exceed 4 years and only if all of the following conditions are met by the applicant:

a. Continued operation of the FDD meets the review criteria and standards under s. HSS 122.07 (1) and (1m);

b. There is continued need, as determined by the department, for the FDD in the health planning area in which the facility is located; and

c. Community-based services, including services developed under s. 46.278, Stats., are inappropriate for the individuals served in the FDD.

4. The department may require that a nursing home seeking approval or an FDD seeking renewal under subd. 3 agree to reduce the size of the FDD 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 long-term care services.

5. Notwithstanding s. HSS 122.07 (1m) (e), the department may waive the minimum size limits established under s. HSS 122.07 (1m) (e) for a facility with an approved plan under subd. 4.

6. Notwithstanding s. 150.29, Stats., if initial approval of an FDD is not renewed under subd. 3 or if approval or renewal is conditioned upon

the requirement of subd. 4, reconversion of these beds to nursing home beds does not require approval under s. HSS 122.04.

(d) *FDD converted to a nursing home.* The following provisions apply to applications under s. HSS 122.02 (2) (b) and s. 150.21 (5), Stats., for the total conversion of an FDD under ch. HSS 134 to be a nursing home under ch. HSS 132:

1. An application may be submitted only in response to a request by the department for applications.

2. The department may accept an application only if the proposed converted facility is presently located or will be located in a county designated in accordance with s. HSS 122.05 (1) (b) 2 or s. 150.40, Stats., and that county is located within the same health planning area in which the facility is presently located.

(2) **OTHER APPLICATIONS.** Any person intending to engage in activities subject to this subchapter that are not specified under sub. (1) or (3) 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 within 365 days after the date the department receives notice of the applicant's intent to engage in the activity.

(3) **CENTERS.** After a change in the statewide bed limit, the department shall solicit applications from the state centers for the developmentally disabled to increase bed capacity. The schedule for submitting applications shall be determined by the department.

(4) **PROCESS FOR APPLICATIONS FOR BEDS AND APPLICATIONS FROM CENTERS.** (a) *Notice requesting applications.* The request for applications for beds under sub. (1) and from centers under sub. (3) shall be published in a major daily newspaper in each affected planning area on the first and second working days of the month during which requests are to be made. The notice shall state the deadline by which all applications are to be received.

(b) *Application forms.* All applications shall be submitted on forms prescribed by the department. A prospective applicant may obtain the forms from the department.

Note: For copies of application forms, contact: Office of Management and Policy, Division of Health, P.O. Box 1808, Madison, Wisconsin 53701-1808.

(c) *Period for accepting applications.* The department shall accept applications submitted within 60 days following publication of the request for applications. The department shall return any application which:

1. Proposes to add new beds in a planning area, county or service area for which a request for applications was not made;

2. Exceeds the new bed allotment for the planning area;

3. Was submitted more than 60 days after the request for applications was published; or

4. Was submitted prior to publication of the request for applications.

(d) *Review for completeness.* 1. Each application submitted under sub. (1) or (3) shall be reviewed by the department for completeness. An application shall be deemed incomplete if the applicant:

- a. Fails to provide all of the requested information;
- b. Provides the information in a manner which is illegible or otherwise unusable by the department; or
- c. Provides information which contradicts or is not justified by other materials in the application.

2. The department may request additional information from the applicant within 10 working days following receipt of the application by the department.

3. The applicant shall provide the required additional information within 30 days following the closing date for accepting applications.

4. The department shall return all applications for which additional information has not been received by the deadline established in subd. 3.

5. Except as provided in subd. 4., the department shall declare all applications for beds under subs. (1) and (3) complete 60 days after the date of publication of the request for applications, or 90 days from that date if an application under sub. (1) or (3), including any application under sub. (1) undergoing concurrent review, was originally declared incomplete and the additional information requested by the department was received within 30 days following the closing date for accepting applications.

Note: Upon written request, the department will provide technical assistance to any small business, as defined in s. 227.114 (1) (a) Stats., or other small organization with fewer than 25 full-time employees or annual revenues of less than \$2,500,000 regarding application materials and procedures. Requests should be sent to the Bureau of Planning and Development, P.O. Box 1808, Madison, Wisconsin 53701-1808.

(4m) **PROCESS FOR OTHER APPLICATIONS.** (a) *Application forms.* All applications under sub. (2) shall be submitted on forms prescribed by the department. A prospective applicant may obtain the forms from the department.

Note: For copies of the application forms, contact the Office of Management and Policy, Division of Health, P.O. Box 1808, Madison, Wisconsin 53701-1808.

(b) *Review for completeness.* 1. Each application submitted under sub. (2) shall be reviewed by the department for completeness. An application shall be deemed incomplete if the applicant:

- a. Fails to provide all of the requested information;
- b. Provides the information in a manner which is illegible or otherwise unusable by the department; or
- c. Provides information which contradicts or is not justified by other materials in the application.

2. The department may request additional information from the applicant within 10 days following receipt of the application by the department.

3. The department shall declare the application complete on the date which the department receives all the required information.

Note: Upon written request, the department will provide technical assistance to any small business, as defined in s. 227.114 (1) (a), Stats., or other small organization with fewer than 25 full-time employees or annual revenues of less than \$2,500,000 regarding application materials and procedures. Requests should be sent to the Office of Management and Policy, Division of Health, P.O. Box 1808, Madison, Wisconsin 53701-1808.

(5) **BEGINNING OF REVIEW PERIOD.** (a) *Beds and centers.* The department shall publish in the ch. 150 newsletter of the office of management and policy and in a major daily newspaper in each affected planning area a list of all complete applications received under sub. (1) or (3), listing all applicants and describing their applications, within 20 days after the applications are declared complete. No person submitting an application for new beds may revise the cost or scope of the proposal after a notification of completeness has been made without the written consent of the department.

(b) *Other applications.* The department shall publish in the ch. 150 newsletter of the office of management and policy and in a major daily newspaper in each affected planning area a list of all complete applications received under sub. (2) on or before the 20th day of the month following the month in which it declares the applications complete.

(c) *Beginning of review period.* The review period for applications shall begin on the publication date of the list under either par. (a) or (b).

(6) **PUBLIC MEETING.** Upon the request of any affected party, the department shall hold a public meeting within 60 days following publication of the list of complete projects submitted under sub. (1), (2) or (3). This meeting shall be used to elicit testimony from affected parties about applications under review. The department shall maintain minutes or another record of the testimony. All requests for a public meeting shall be received by the department within 10 days after publication of the list of complete applications. The public meeting shall be held prior to the initial finding by the department.

(7) **DEPARTMENT REVIEW AND INITIAL FINDING.** (a) *Review.* The department shall review applications for their consistency with the criteria in s. HSS 122.07 and shall issue an initial finding to approve or reject an application within 75 days following publication of the complete applications list, unless an applicant asks for an extension or, in the case of competing applications, all applicants undergoing concurrent review agree to an extension or the review cycle is extended under sub. (8).

(b) *Initial finding.* The department's initial finding shall be based upon a comparative analysis of all applications undergoing concurrent review using the criteria specified in s. HSS 122.07.

(c) *Initial finding: converted beds.* The following provisions apply to initial findings on applications for conversions to an FDD under s. HSS 122.02 (2) (a) and (c):

1. The department may issue approvals during 1987 only to applicants who file applications by June 2, 1987.

2. The department may delay the effective dates of approval to permit a gradual phase-in of conversions.

3. The department may issue an approval authorizing the applicant to reconvert all or some of the FDD beds to non-FDD nursing home beds  
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without subsequent review and approval under this chapter if the reconversion meets both of the following requirements:

a. The department receives at least 30 days notice of reconversion, if all beds to be reconverted are unoccupied, or a notice that the facility has complied with the requirements of s. 50.03 (14) (c) to (e), Stats., if any bed to be reconverted is occupied; and

b. Any partial reconversion results in a remaining FDD of at least 3 FDD beds which meets the provisions of s. HSS 122.07 (1m) (c).

(8) **EXTENSION.** The department may extend by 60 days the review cycle of all applications undergoing concurrent review under sub. (1), if it finds that completing reviews within the cycle specified in sub. (7) is not feasible due to the volume of applications received from any planning area.

(9) **REQUEST FOR HEARING.** (a) An adversely affected applicant or HSA may file a written request for a public hearing under s. HSS 122.08 within 10 days after the date of the department's initial finding under sub. (7). A hearing request is filed when it is received by the department. If no request for a hearing is made, or if a request is received after the 10-day limit, the department's initial finding shall be the department's final decision. Except as provided in par. (b), a timely request for hearing from an applicant undergoing concurrent review shall preclude issuance of an approval for a competing concurrent application until a final decision is issued by the secretary or a designee. Hearings shall be held in the manner prescribed in s. HSS 122.08.

(b) When an applicant for conversion to an FDD under s. HSS 122.02 (2) (a) or (c) who has undergone concurrent review files a timely request for a hearing under s. HSS 122.08 on the initial finding, the department shall issue approvals for the competing concurrent applications that were initially approved but only for the number of beds that exceeds the number proposed by the applicant or applicants requesting a hearing. Approvals shall be issued in order beginning with the application which received the lowest score under s. HSS 122.07 (2) (am).

(10) **EXPEDITED REVIEW.** (a) *Conditions for expedited review.* An application submitted under sub. (2) is subject to the requirements of this subsection rather than subs. (4m) (b), (5) (b) and (c) and (6) to (9) if:

1. The project does not increase the bed capacity of or totally replace an existing nursing home and the project was developed pursuant to a department-approved plan of correction to remedy code-related physical plant deficiencies. Applications submitted to correct code violations shall provide evidence of the violations and approved plan of correction and shall not go beyond what is necessary to correct those deficiencies; or

2. The application concerns a cost overrun on a previously approved project.

(b) *Timing of application.* An application under par. (a) may be submitted at any time on forms prescribed by the department provided that at least 30 days notice has been given to the department of a person's intent to submit the application and the applicant has received written authorization from the department to submit the application.

(c) *Review period.* Applications which are subject to this subsection shall be reviewed by the department within 60 days of receipt of a complete application.

(d) *Completeness.* 1. The department shall have 5 working days to determine if the application is complete and, if incomplete, to issue a request for additional information to the applicant. An incomplete application is one in which:

- a. The applicant has failed to provide requested information;
- b. The information is illegible or unreadable in the form submitted; or
- c. The application contains information contradicted or unjustified by other materials in the application.

2. Applications that were originally declared incomplete shall be declared complete on the date of receipt of all additional information requested by the department.

(e) *Meeting:* No public meeting is required on any project submitted under this subsection.

(f) *Department's initial finding.* The department shall issue its initial finding to approve or reject the application within 60 days following receipt of a complete application. The initial finding shall be based on the criteria specified in s. HSS 122.07.

(g) *Hearing.* An adversely affected applicant shall have 10 days after the date of the initial finding to file a written request for a public hearing to challenge the initial finding on an application. Public hearings shall be held in the manner specified in s. HSS 122.08. If no requests for a hearing are made or if they are received after the 10-day limit, the initial finding becomes the department's final action.

**History:** Cr. Register, March, 1985, No. 351, eff. 4-1-85; emerg. cr. (1) (c), eff. 1-1-87; emerg. cr. (1) (c), am. (9), eff. 5-31-87; cr. (1) (c), (7) (c) and (9) (b), am. (7) (a), renum. (9) to be (9) (a) and am., Register, October, 1987, No. 382, eff. 11-1-87; emerg. cr. (1) (d), eff. 10-1-88; emerg. cr. (1m) eff. 7-1-89; emerg. cr. (1r), eff. 9-21-90; am. (1) (a) l. a. to d., (3), (4) (a), (b), (c) (intro.), (d) l. intro., 2. and 5., (7) (a), (8), (9) (a), (10) (a) (intro.), (b) (d) l. intro. and (10) (g), r. and recr. (2) and (10) (e), r. (6) (a) and (c), renum. (5) and (6) (b) to be (5) (a) and (6) and am., cr. (1) (c) 3. to 6., (4m), (5) (b) and (c), Register, January, 1991, No. 421, eff. 2-1-91; emerg. cr. (1) (d), eff. 5-11-93; cr. (1) (d), Register, January, 1994, No. 457, eff. 2-1-94.

**HSS 122.07 Review criteria and selection process. (1) REVIEW CRITERIA.** The department shall use the criteria set out in this subsection in its review of all applications for project approval. Cost containment shall be the first priority in applying these criteria. The department may not approve a project unless the applicant has demonstrated that:

- (a) The project is consistent with the state health plan and other long-term care support plans developed by the department.
- (b) Medical assistance funds appropriated are sufficient to reimburse the applicant for providing nursing home or FDD care.
- (c) The cost of renovating or replacing the facility or adding new beds is consistent with the cost of similar nursing home or FDD projects recently approved by the department and is reasonable based on independent analyses using industry-recognized cost-estimating techniques, and:

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1. The proposed cost per bed for total facility replacement or for new facilities and beds does not exceed the following per bed cost expressed in the formula for nursing homes and FDDs, that C is less than or equal to 1.4 (S) (F).

a. "C" in this formula means maximum cost per bed using the capitalized project costs, including site improvements, buildings, fixed equipment, interest during construction and professional and financing fees, calculated to the midpoint of construction.

b. "S" equals \$31,000.

Note: \$31,000 is the statewide cost per bed for the base year 1983.

c. "F" in this formula means inflation factor.

Note: The department uses the inflation estimates published in *Engineering News Record's* Building Cost Index.

2. The proposed equivalent cost per bed for renovation and partial replacement projects does not exceed the per bed cost as expressed in the formulae for nursing homes and FDDs, that  $C_e$  is less than

$$\frac{1.4 (S) (F)}{35}$$

a. " $C_e$ " in this formula means the maximum equivalent per bed cost, calculated as follows:

$$C_e = \frac{\text{capitalized project costs} + \text{current annual depreciation}}{\frac{\text{(remaining useful life of affected areas) (total beds)}}{\text{total beds}}}$$

b. "S" and "F" in this formula are as defined in subd. 1.

Note: The maximum capital allowances calculated pursuant to par. (c) are not to be used by applicants as the expected cost of projects. Applicants are encouraged to seek less costly alternatives to the state maximums and all applications will have to meet all review criteria before undergoing the selection process in sub. (2).

(d) The project represents the most cost-effective, reasonable and feasible alternative for renovation or replacement of a facility, for the addition of beds to a facility or for the construction of a new facility.

1. The applicant shall provide an analysis which clearly defines all other reasonable alternatives such as:

- a. Variations in functional program;
- b. Renovation instead of replacement;
- c. Reductions in bed capacity;
- d. Variations in facility design; and
- e. Variations in methods or materials of construction.

2. The analysis shall include an evaluation of the existing physical plant.

3. The analysis shall include a life-cycle cost analysis for each alternative studied, using forms provided by the department. In this subsection "life cycle" means the number of years for which alternatives are com-

pared, and "life-cycle cost" means all relevant costs associated with a project during the project's defined life cycle.

Note: Copies of the life-cycle cost analysis form are included in the application materials. They may be obtained from the Office of Management and Policy, Division of Health, P.O. Box 1808, Madison, Wisconsin 53701-1808.

4. The department may independently develop its own alternatives to compare with those developed by the applicant.

(e) A need for additional beds exists in the planning area in which the project would be located. No new beds may be approved in any planning area if their addition would exceed the planning area's adjusted allocation, calculated pursuant to s. HSS 122.05.

(f) The project is consistent with local plans for developing community-based long-term care services. These plans shall include those developed by local units of government.

(g) Necessary health care personnel, and capital and operating funds for provision of the proposed nursing home services are available, as follows:

1. The project will meet minimum staffing and financial requirements developed by the department pursuant to ch. HSS 132 or 134;

2. The facility will be located to assure reasonable access to nursing staff, emergency medical care, physician coverage, acute care services and ancillary services; and

3. Sufficient cash resources and cash flow exist to pay operating and initial start-up costs.

(h) The project is financially feasible, capable of being undertaken within one year of approval and completed within a reasonable period of time beyond the one-year approval period, as evidenced by:

1. The applicant's demonstration of ability to secure adequate funds to finance the project. The applicant shall have adequate capacity to incur the debt associated with the project. Applicants shall have the ability to pay long-term debt through their present and future cash flow and profitability positions;

2. The availability of financing at average or below market rates for the class of home during the period of validity of the approval. Classes of homes are governmental, proprietary and nonprofit. Projects relying on sources of financing which historically take longer to process than the period of validity of an approval shall be rejected unless there is clear and definite proof supplied by the applicant that the funding source will be able to make adequate funds available within the period of validity of the approval; and

3. The reasonableness and attainability of the applicant's construction schedule.

(i) Appropriate alternative methods for providing nursing home or FDD care are unavailable in the planning area. Alternative methods shall be deemed unavailable if the project is consistent with long-term care initiatives developed by the department.



(j) The existing and proposed quality of care is satisfactory, as determined by:

1. The department's investigations. No approvals may be granted to any person who owns or operates a facility with one or more uncorrected class A or class B violations unless the project is specifically designed to remedy those violations, or to any person who owns or operates a facility against which a medical assistance or medicare decertification action is pending;

2. The department's review of materials submitted by the applicant, which may include an independent performance evaluation of an existing facility, an evaluation of other homes owned and operated by an applicant seeking approval for a new facility, and patient satisfaction surveys, where available;

3. Recommendations or comments from affected parties regarding the quality of care in facilities owned and operated by the applicant; and

4. For applications proposing replacement or relocation of beds, approval by the department of a plan for the placement or relocation of persons residing in those beds, based on the census of the FDD or other nursing home at the time of submission of the application.

(k) The project is consistent with all applicable federal, state and local licensing, physical plant, zoning and environmental laws.

(l) Applications for renovation proposals, replacement facilities and capital expenditures over \$600,000 which do not affect bed capacity and which meet all criteria in sub. (1) shall be approved unless the per diem rates proposed as a result of the project are inconsistent with those of similar FDD or other nursing home projects recently approved by the department.

(m) REVIEW CRITERIA FOR CONVERSION OF A NURSING HOME TO AN FDD. The department shall use the criteria in sub. (1) and the additional criteria in this subsection in its review of all applications for conversion of a nursing home to an FDD under s. HSS 122.02 (2) (a) and (c). The department shall solicit the comments of county departments organized under s. 46.23, 51.42, or 51.437, Stats., on all of these applications. The department shall not approve an application subject to this subsection unless the applicant has demonstrated that:

(a) The proposed per diem rates for the FDD are consistent with those of similar facilities for developmentally disabled persons;

(b) The applicant has experience in providing active treatment as defined in 42 CFR 435.1099 and the department has approved the applicant's program statement under s. HSS 132.51 (3);

(c) Conversion of some beds within a non-FDD nursing home to FDD beds will result in a physically separate unit of the facility, which may be a ward, contiguous wards, a wing, a floor or a building, and which is separately staffed;

(d) Staff will be efficiently deployed in the FDD part of the facility and in the nursing home part of the facility, as well as in the facility as a whole;

(e) The FDD will have a minimum of 16 beds for developmentally disabled persons; and

(f) 1. A number of developmentally disabled residents sufficient to fill the requested beds currently reside in the facility and require active treatment; and

2. If the applicant proposes more beds than it has residents under par. (f), that county departments organized under s. 46.23, 52.42 or 51.437, Stats., identify persons who need placement in an FDD and give assurances that these persons will be placed in that facility.

(r) **ADDITIONAL REVIEW CRITERIA FOR CONVERSION OF AN FDD TO A NURSING HOME.** The department shall use the applicable criteria in sub. (1) and the additional criteria in this subsection in its review of an application under s. HSS 122.02 (2) (b) and s. 150.21 (5), Stats., for the total conversion of an FDD under ch. HSS 134 to be a nursing home under ch. HSS 132. The department shall not approve an application subject to this subsection unless the applicant demonstrates that:

(a) The proposed per diem rates for the nursing home are consistent with those of similar facilities;

(b) There will remain in the health planning area in which the applicant FDD is located sufficient FDD beds to serve the population of persons with developmental disabilities, including any residents of the converting facility who need to remain in an FDD;

(c) There are other adequate and appropriate resources available in the county or counties served by the facility being converted for relocating its residents as determined by the applicable county department or departments organized under s. 46.23, 51.42 or 51.437, Stats.; and

(d) The facility, in conjunction with the applicable county department or departments organized under s. 46.23, 51.42, or 51.437, Stats., has developed a preliminary relocation plan under s. 50.03 (14) (c) 8, Stats., for each resident which is acceptable to the county department or departments and addresses the needs and concerns of the resident or the resident's guardian.

(2) **RANKING AND SELECTION PROCESS.** (a) Applications for new or redistributed beds which meet all of the criteria in sub. (1) shall be subject to the following final selection process:

1. Applications shall be ranked in the order of their proposed composite per diem rates, beginning with the lowest and ending with the highest. Rates within one percent of each other shall be considered equal for purposes of ranking. The composite per diem rate shall be calculated as follows:

a. Multiply the proposed skilled nursing facility per diem rates, exclusive of supplements, for each payment source by the percentage of projected skilled nursing facility patient days by payment source; and

b. Add all the products of the multiplication in subpar. a to obtain the composite per diem rate;

2. The department shall review the applicant's methodology for calculation of the proposed rates for consistency with current reimbursement Register, January, 1994, No. 457

practices and reasonableness. An applicant whose rates are found to be inconsistent or unreasonable will be removed from the selection process;

3. The department shall approve projects in the order of their ranking until all beds allotted to a planning area are distributed;

4. The department may approve an application proposing a higher per diem rate than others undergoing concurrent review if the applicant can demonstrate that the application would substantially resolve a significant problem identified in the state health plan with respect to:

a. The existing distribution of beds in the county in which the project would be located, or in contiguous counties;

b. The need to serve a special diagnostic group of inpatients in the planning area or county in which the project would be located; or

c. The existing distribution of population within the planning area or county in which the project would be located; and

5. If the composite per diem rate for 2 or more of the applicants undergoing concurrent review is equal, the department shall approve or deny those projects as follows:

a. If the total number of beds proposed by all applicants undergoing concurrent review is less than the total number of beds available, each of the projects shall be approved; and

b. If the total number of beds proposed by all applicants undergoing concurrent review is greater than the number of beds available, applications shall be ranked on the basis of per bed cost as calculated in sub. (1) (c), beginning with the lowest and ending with the highest. The department shall then approve projects in order of this ranking until all beds available are distributed.

(am) Applications under s. HSS 122.02 (2) (a) and (c) which meet all of the criteria in subs. (1) and (1m) shall be subject to the following selection process:

1. If after removing from consideration all applications which fail to meet one or more review criteria, there remain more applications than can be approved for the beds available under s. HSS 122.04 (1) (b) 2 a, the department shall rank the remaining applications according to how each meets each applicable review criterion under subs. (1) and (1m), assigning the lowest number to the application which best meets each criterion.

2. The department shall approve applications in order beginning with the lowest score, until all available beds are allocated. If there is a tie between applications for the last available approval, the department shall rank the applications according to their scores on review criteria under sub. (1m) (b).

(b) Applications for renovation proposals, replacement facilities and capital expenditures over \$600,000 which do not affect bed capacity and which meet all criteria in sub. (1) shall be approved unless the per diem rates proposed as a result of the project are inconsistent with those of similar FDD or other nursing home projects recently approved by the department.

(c) In applying pars. (a) and (b), the department shall consider the comments of affected parties.

(d) The department may not approve new beds if this would cause the statewide bed limit to be exceeded.

*History:* Cr. Register, March, 1985, No. 351, eff. 4-1-85; emerg. cr. (1m) and (2) (am), eff. 1-1-87; am. (2) (a) (intro.) and 1., cr. (2) (a) 5., Register, January, 1987, No. 373, eff. 2-1-87; emerg. cr. (1m) and (2) (am), eff. 5-31-87; cr. (1m) and (2) (am), Register, October, 1987, No. 382, eff. 11-1-87; emerg. cr. (1r), eff. 10-1-88; emerg. am. (1) (c) 1. and 2. eff. 3-16-90; am. (1) (c) 1. and 2., Register, September, 1990, No. 417, eff. 10-1-90; correction in (1) (g) 1. made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1990, No. 417; am. (1) (f), (2) (a) 4. intro. and (c), cr. (1) (l), Register, January, 1991, No. 421, eff. 2-1-91; emerg. cr. (1r), eff. 5-11-93; emerg. r. and recr. (1r) (d), eff. 9-30-93; cr. (1r), Register, January, 1994, No. 457, eff. 2-1-94.

**HSS 122.08 Hearing process. (1) RIGHT TO A HEARING.** An applicant whose application is rejected may request a public hearing to review the department's initial finding.

(2) **REQUEST FOR A HEARING.** (a) An applicant desiring a public hearing shall file a written request for a public hearing, no later than 10 days after the issuance of the initial finding, to both the department's division of health and the department's office of administrative hearings.

*Note:* The mailing address of the Department's Division of Health is P.O. Box 1808, Madison, Wisconsin 53701-1808 and the mailing address of the Office of Administrative Hearings is P.O. Box 7875, Madison, Wisconsin 53707.

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

(3) **PUBLIC HEARING.** (a) *Start of hearing process.* The department shall commence the hearing process within 30 days after receiving a request under sub. (2), or 30 days following the last request in the event of a concurrent review, unless all parties to the hearing consent to an extension of this period. The hearing process shall begin upon appearance of the parties before the hearing examiner as part of a prehearing conference.

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

(c) *Location.* All public hearings and prehearing conferences shall be held in the city of Madison unless any party demonstrates that this would impose an undue hardship on that party.

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

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

(e) *Prehearing conference.* 1. At least 14 days prior to the public hearing, a prehearing conference shall be held. The purpose of the prehearing conference shall be to consider:

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a. The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof; and

b. The scheduling of the submission of names of witnesses to be called and the subject matter of testimony to be presented at the hearing.

2. The hearing examiner may issue prehearing orders:

a. Directing the order of presentation;

b. Limiting evidence and the number of witnesses;

c. Requiring that evidence be presented in written form and exchanged among parties prior to the hearing; and

d. Determining whether a party as defined under s. 227.01 (6), Stats., has standing to participate in the hearing.

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

(f) *Procedures for conducting the hearing.* 1. Issues raised at the hearing shall be limited to the review criteria cited as grounds for disapproval in the initial finding. Criteria not identified in the initial finding are deemed met or not applicable. Evidence may be received which relates to non-contested criteria only to the extent the evidence is relevant to contested criteria.

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

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

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

c. The record of the public meeting under s. 150.35 (2), Stats. and s. HSS 122.06 (6), if any; and

d. Cross-examination of persons preparing or making statements contained in the documents under subpars. a to c.

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

4. Persons preparing or making statements contained in the application, staff analysis, initial finding, recommendation or supporting documents shall be available for cross-examination, unless cross-examination

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