



## 1995 SENATE BILL 599

March 5, 1996 - Introduced by Senators DECKER, CHVALA, MOEN, BURKE and WINEKE, cosponsored by Representative BOYLE. Referred to Committee on Health, Human Services and Aging.

1     **AN ACT to repeal** 20.155 (3) (a); **to amend** 49.49 (2) (c) 1., 49.74, 50.36 (1), 146.37  
2           (1g), chapter 196 (title), 196.01 (intro.) and 632.75 (5); and **to create** 20.155 (3),  
3           49.45 (3) (e) 11., 153.05 (4n), subchapter I (title) of chapter 196 [precedes 196.01]  
4           and subchapter II of chapter 196 [precedes 196.991] of the statutes; **relating**  
5           **to:** requiring the public service commission to establish maximum hospital  
6           rates, providing an exemption from emergency rule procedures, granting rule-  
7           making authority, making an appropriation and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the public service commission (PSC) is generally responsible for regulating public utilities in this state. This bill extends the PSC's regulatory power to cover rate setting for hospitals. The bill requires the PSC to set maximum rates that a hospital may charge for services. Under the bill, a hospital may request rate changes according to a schedule created by the PSC. As part of the rate change review procedure, the hospital must publish a notice of review stating the process by which interested persons may become parties to the review. The hospital must also submit to the PSC its proposed financial requirements. The financial requirements include, among other things:

1. Necessary operating expenses.
2. Interest expenses on debt incurred for capital or operating costs.
3. Costs of medical education.
4. Costs of services, facilities and supplies that organizations related to the hospital by common ownership or control supply.
5. Unrecovered costs from private parties who fail to pay the full charge for services provided.

6. Fees assessed by the PSC or other regulatory agency.
7. Capital requirements.

The bill sets forth standards for the PSC's decision making including:

1. The need to reduce the rate of hospital cost increases while preserving the quality of health care.
2. Cost-related trend factors based on nationally recognized economic models.
3. Special circumstances of rural and teaching hospitals.

The PSC is authorized under this bill to disallow certain costs and revenues in determining its rate recommendation.

Under the bill, if the hospital does not accept the PSC's recommendations, the hospital must request a settlement conference between its representatives and the PSC staff. If the hospital is dissatisfied with the results of the settlement conference, the hospital may request an informal hearing before the PSC. The PSC may, by order, conduct a formal hearing instead of an informal hearing. If a formal hearing is held, the PSC must issue at the end of the hearing its order establishing maximum rates for the hospital's year under review. If an informal hearing is held, the PSC must issue its order within 50 days after the date on which the hospital requested the hearing.

This bill authorizes hospitals to increase rates selectively if the aggregate increase in its rates does not exceed the amount authorized by the PSC. The hospital must, prior to increasing rates, explain to the PSC its method in applying the increase and allow the PSC 5 working days to determine if the aggregate increase exceeds the authorized amount. If the PSC disapproves the hospital's method in applying the increase, and the hospital fails to modify its method as recommended by the PSC, the PSC may challenge the method in circuit court.

Except under certain circumstances, this bill prohibits the PSC from reducing rates prior to the date of the scheduled succeeding review or during the succeeding review. The bill also prohibits the PSC from directly interfering with the patient-physician decision-making relationship, directly controlling the volume or intensity of hospital utilization or directly restricting the freedom of a hospital to exercise management decisions in complying with rates established by the PSC.

Finally, under the bill, the PSC, with certain exceptions, is responsible for reviewing and approving all of the following proposed projects:

1. A capital expenditure in excess of \$1,000,000 made by or on behalf of a hospital.
2. The implementation of new services to a hospital that exceed \$500,000 in a 12-month period.
3. An expenditure in excess of \$500,000 made by or on behalf of a hospital, independent practitioner, limited liability company, partnership, unincorporated medical group or service corporation for clinical medical equipment.
4. The purchase or acquisition of a hospital.
5. The construction or operation of an ambulatory surgery center or a home health agency.

The bill requires a person intending to undertake a project or activity subject to review to publish a notice describing the project or activity and to conduct a public

hearing on the proposed project or activity. The bill also requires the PSC to publish a notice of receipt of an application for review. The PSC must also conduct a public meeting upon the request of an affected party to review projects seeking approval.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

				<b>1995-96</b>	<b>1996-97</b>
<b>20.155 Public service commission</b>					
(3)	HOSPITAL RATE SETTING AND CAPITAL EXPENDITURE REVIEW				
(a)	General program operations	GPR	A	-0-	500,000
(gm)	Assessments	PR	A	-0-	-0-
(gr)	Application Fees	PR	A	-0-	-0-

**SECTION 2.** 20.155 (3) of the statutes is created to read:

20.155 (3) HOSPITAL RATE SETTING AND CAPITAL EXPENDITURE REVIEW. (a) *General program operations.* The amounts in the schedule for hospital rate-setting activities under subch. II of ch. 196.

(gm) *Assessments.* The amounts in the schedule for hospital rate-setting activities of the commission under ch. 196. All moneys received under s. 196.9996 (2) and 1995 Wisconsin Act .... (this act), section 15 (1) (d) , shall be credited to this appropriation.

1 (gr) *Application fees*. The amounts in the schedule for the capital expenditure  
2 review program under ch. 196. All moneys received under s. 196.9998 (6) shall be  
3 credited to this appropriation.

4 **SECTION 3.** 20.155 (3) (a) of the statutes, as created by 1995 Wisconsin Act ...  
5 (this act), is repealed.

6 **SECTION 4.** 49.45 (3) (e) 11. of the statutes is created to read:

7 49.45 (3) (e) 11. Notwithstanding subs. 1 to 10, the department may authorize  
8 the public service commission to determine reimbursement rates under subch. II of  
9 ch. 196.

10 **SECTION 5.** 49.49 (2) (c) 1. of the statutes is amended to read:

11 49.49 (2) (c) 1. A discount or other reduction in price obtained by a provider of  
12 services or other entity under chs. 46 to 51 and 58 and subch. II of ch. 196 if the reduc-  
13 tion in price is properly disclosed and appropriately reflected in the costs claimed or  
14 charges made by the provider or entity under a medical assistance program.

15 **SECTION 6.** 49.74 of the statutes, as affected by 1995 Wisconsin Act 27, is  
16 amended to read:

17 **49.74** (title) **Institutions subject to ~~chapter~~ chapters 150 and 196**. Any  
18 institution created under the authority of s. 49.70, 49.71, 49.72 or 49.73 is subject to  
19 ch. 150 and subch. II of ch. 196.

20 **SECTION 7.** 50.36 (1) of the statutes, as affected by 1995 Wisconsin Act 27, is  
21 amended to read:

22 50.36 (1) The department shall promulgate, adopt, amend and enforce such  
23 rules and standards for hospitals for the construction, maintenance and operation  
24 of the hospitals deemed necessary to provide safe and adequate care and treatment  
25 of the patients in the hospitals and to protect the health and safety of the patients

1 and employes; and nothing contained herein shall pertain to a person licensed to  
2 practice medicine and surgery or dentistry. The building codes and construction  
3 standards of the department of development shall apply to all hospitals and the de-  
4 partment may adopt additional construction codes and standards for hospitals, pro-  
5 vided they are not lower than the requirements of the department of development.  
6 Except for the construction codes and standards of the department of development  
7 and except as provided in s. 50.39 (3) and subch. II of ch. 196, the department shall  
8 be the sole agency to adopt and enforce rules and standards pertaining to hospitals.

9 **SECTION 8.** 146.37 (1g) of the statutes is amended to read:

10 146.37 (1g) Except as provided in s. 153.85, no person acting in good faith who  
11 participates in the review or evaluation of the services of health care providers or fa-  
12 cilities or the charges for such services conducted in connection with any program  
13 organized and operated to help improve the quality of health care, to avoid improper  
14 utilization of the services of health care providers or facilities or to determine the rea-  
15 sonable charges for such services, or who participates in the obtaining of health care  
16 information under ch. 153, or who participates in hospital rate-setting activities un-  
17 der subch. II of ch. 196, is liable for any civil damages as a result of any act or omission  
18 by such person in the course of such review or evaluation. Acts and omissions to  
19 which this subsection applies include, but are not limited to, acts or omissions by peer  
20 review committees or hospital governing bodies in censuring, reprimanding, limiting  
21 or revoking hospital staff privileges or notifying the medical examining board under  
22 s. 50.36 or taking any other disciplinary action against a health care provider or facil-  
23 ity and acts or omissions by a medical director, as defined in s. 146.50 (1) (j), in review-  
24 ing the performance of emergency medical technicians or ambulance service provid-  
25 ers.

1           **SECTION 9.** 153.05 (4n) of the statutes is created to read:

2           153.05 (**4n**) The office shall provide the public service commission with in-  
3 information necessary for performance of duties of the public service commission under  
4 s. 196.9998 (16) (a) and as requested of the office by the public service commission.

5           **SECTION 10.** Chapter 196 (title) of the statutes is amended to read:

6   **CHAPTER 196**

7   **REGULATION OF PUBLIC UTILITIES**

8   **SERVICE COMMISSION**

9           **SECTION 11.** Subchapter I (title) of chapter 196 [precedes 196.01] of the statutes  
10 is created to read:

11   **CHAPTER 196**

12   SUBCHAPTER I

13   REGULATION OF PUBLIC UTILITIES

14           **SECTION 12.** 196.01 (intro.) of the statutes is amended to read:

15           **196.01 Definitions.** (intro.) As used in this chapter ~~chapter~~ subchapter and ch. 197,  
16 unless the context requires otherwise:

17           **SECTION 13.** Subchapter II of chapter 196 [precedes 196.991] of the statutes is  
18 created to read:

19   **CHAPTER 196**

20   SUBCHAPTER II

21   HOSPITAL RATE SETTING

22           **196.991 Definitions.** In this subchapter:

23           **(1)** “Capital expenditure limit” means the maximum amount of capital expen-  
24 ditures that may be approved under s. 196.9998.

1           **(1m)** “Capital project” means a proposed capital expenditure that exceeds  
2           \$1,000,000 or, if the purpose of converting to a new use or renovating part or all of  
3           a hospital, a proposed capital expenditure that exceeds \$1,500,000.

4           **(2)** “Commission” means the public service commission.

5           **(3)** “Consumer price index” has the meaning given in s. 16.004 (8) (e) 1.

6           **(4)** “Hospital” has the meaning given in s. 50.33 (2), except that “hospital” does  
7           not include a center for the developmentally disabled, as defined in s. 51.01 (3).

8           **(5)** “Rates” means individual charges of a hospital for the services that it pro-  
9           vides or, if authorized under s. 196.999 (3), the aggregate charges based on case mix  
10          measurements.

11          **196.992 Prospective rate setting.** Beginning on July 1, 1997, the commis-  
12          sion shall establish and may regularly revise maximum hospital rates on a prospec-  
13          tive basis. The commission shall publish biennial reports showing its proceedings,  
14          together with information necessary to describe the rate of hospital cost increases  
15          and the financial condition of hospitals.

16          **196.993 Rule making.** The commission shall promulgate all of the following:

17          **(1)** Rules that implement this subchapter. At least 2 commissioners must sign  
18          any rules that are promulgated to interpret s. 196.992.

19          **(2)** Rules that establish the rate for assessments that are authorized under s.  
20          196.9996.

21          **196.994 Requests for a rate change.** **(1)** The commission shall create a  
22          schedule allowing each hospital to request rate changes annually, on or after the date  
23          the hospital receives its audited financial statements. The commission may schedule  
24          a review of the hospital’s rates and revise the rates on its own initiative or at the

1 request of any person when good cause is shown. A hospital may submit a rate  
2 request on or after the scheduled date.

3 (2) Within 10 days after it submits a rate request under sub. (1), the hospital  
4 shall publish a class 1 notice under ch. 985. If the hospital fails to submit a rate re-  
5 quest by the date scheduled for a review under sub. (1), the commission shall publish  
6 a class 1 notice under ch. 985 within 10 days after the date scheduled for the review.

7 This notice, whether published by the hospital or the commission, shall inform the  
8 public of the review, summarize the rate sought, if any, and state the process by which  
9 interested persons may become parties to the review. A person may become a party  
10 to the review only by notifying the commission in writing within 30 days after the  
11 date the notice is published.

12 (3) Each hospital shall submit its proposed financial requirements to the com-  
13 mission at the same time that it submits a rate request. Except as provided in s.  
14 196.999 (4) (g), each hospital shall provide the commission with the information that  
15 the commission determines is necessary to perform its responsibilities with respect  
16 to setting rates and monitoring established rates. Patient care and other organiza-  
17 tions and hospital corporate affiliates that generate financial requirements of a hos-  
18 pital under review shall also release to the commission financial or other statistical  
19 information related to the financial requirements that the commission determines  
20 is necessary to perform its responsibilities with respect to setting rates and monitor-  
21 ing established rates.

22 (4) The commission may require hospitals to conform with a uniform reporting  
23 system.

24 (5) The commission shall establish and regularly publish a list of the 25 most  
25 heavily used charge elements for hospitals.



1           **196.995 Financial requirements. (1)** Financial requirements of each hospi-  
2 tal that submits a rate request shall include:

3           (a) Necessary operating expenses, including wages, employe fringe benefits,  
4 purchased services, professional fees, repairs and maintenance, dietary and medical  
5 supplies, pharmaceuticals, utilities, insurance, standby costs and applicable taxes.  
6 Any amount representing the value of services performed by members of a religious  
7 order or other organized religious group may only be included if actually paid to  
8 members of the religious group and shall be equivalent to the amounts paid to em-  
9 ployes for similar work. The commission may not use previously accumulated de-  
10 preciation of capitalized assets to offset operating expenses.

11           (b) Interest expenses on debt incurred for capital or operating costs. Interest  
12 payments on debts incurred for capital costs shall be offset by income earned on in-  
13 vestments unless the income is assigned by the donor. For the purpose of calculating  
14 the interest expense on debt incurred for capital costs to be included as financial re-  
15 quirements after the sale and revaluation of a hospital, the debt may not exceed the  
16 revalued price of the hospital, as provided in sub. (4).

17           (c) Direct and indirect costs of medical education, allied education and research  
18 programs approved by the commission, to the extent that the costs are reasonable  
19 and necessary to maintain the quality of these programs. Costs under this para-  
20 graph shall be reduced by tuition, scholarships, endowments, gifts, grants and simi-  
21 lar sources of revenue.

22           (d) Costs of services, facilities and supplies that organizations related to the  
23 hospital by common ownership or control furnish to the hospital. These costs shall  
24 be calculated as the charge of the furnishing organization, but may not exceed a rea-

1 sonable amount in relation to the price of comparable services, facilities or supplies  
2 that could be purchased elsewhere.

3 (e) Unrecovered costs from private parties who fail to pay the full charge for  
4 care provided, unless the hospital fails to maintain sound credit and collection poli-  
5 cies to minimize these costs.

6 (f) Fees assessed by the commission or other regulatory agencies.

7 (g) Operating fund working capital requirements. In this paragraph, “working  
8 capital requirements” means capital in use to operate the hospital at a level sufficient  
9 to avoid unnecessary borrowing, including cash, accounts receivable, inventory and  
10 prepaid expenses less accounts payable and accrued interest. Working capital re-  
11 quirements shall be calculated independently of available funds, as defined in par.

12 (i) 1. Working capital requirements shall be calculated based on the net change in  
13 the estimated year-end balance of the hospital’s year under review, compared to the  
14 year-end balance of the hospital’s prior fiscal year, for the following accounts:

15 1. Cash.

16 2. Accounts receivable.

17 3. Inventories.

18 4. Prepaid expenses.

19 5. Trade accounts payable.

20 6. Accrued interest payable.

21 (h) An amount necessary to establish and maintain a contingency fund in cash  
22 and investments equal to 2% of the budgeted gross revenue for the hospital’s year  
23 under review. The hospital shall use cash and investments to establish and maintain  
24 its contingency fund and shall use the fund to meet unexpected expenses. The com-  
25 mission may review any expenditure of contingency funds in a prior year that

1 requires restoration in the hospital's year under review for reasonableness, consis-  
2 tent with the nature of the unexpected expense.

3 (i) Capital requirements, calculated as the greater of historical, straight-line  
4 depreciation of plant and equipment or the cost of proposed capital purchases as off-  
5 set by available funds, plus debt retirement expenses, prospective accumulation and  
6 capitalized interest. In this paragraph:

7 1. "Available funds" includes cash and investments that are not assigned by the  
8 donor and are available to meet capital needs. "Available funds" does not include op-  
9 erating fund working capital requirements, prospective accumulations that are au-  
10 thorized by the commission, donor-restricted or creditor-restricted funds, grants,  
11 commitments for capital requirements, debt retirement expenses or the amounts  
12 disallowed under s. 196.997 (1) (b). The commission may authorize prospective accu-  
13 mulations if a capital project has lending requirements that necessitate such an ac-  
14 cumulation or can lower its interest costs by borrowing, or if financial needs of a hos-  
15 pital occur because of balloon payments. The commission may also authorize  
16 prospective accumulations to finance a capital project, if the cost of the capital project  
17 equals or exceeds 25% of the hospital's gross patient revenue for the current fiscal  
18 year, the hospital has submitted a 3-year capital expenditure plan to the commission  
19 and the department indicates that the capital project is consistent with the projected  
20 needs of the community.

21 2. "Capital purchases" includes minor remodeling and the purchase of equip-  
22 ment, land, land improvements and leasehold improvements.

23 3. "Depreciation" means the rational allocation of the historical cost of capital-  
24 ized assets throughout their useful lives.

1           4. "Prospective accumulation" does not include funds that exceed the cost of the  
2 capital project for which the funds are accumulated.

3           (j) The amount by which estimated payments by government payers under s.  
4 196.999 (1) (a) exceed actual payments.

5           (k) Financial incentives. The commission shall, by rule, allow financial incen-  
6 tives as additional financial requirements for efficiently operated hospitals.

7           **(2)** Hospitals may collect revenue from sources other than patients, including  
8 gifts and grants, investment income or income from activities incidental to patient  
9 care. Revenues from endowment funds or donor-restricted gifts to provide services  
10 for designated patients shall offset the cost of those services. No revenue from gener-  
11 al endowment funds or unrestricted gifts may be used to offset operating expenses  
12 except that revenue from these funds or gifts may be used to offset interest expenses.  
13 Revenues received to finance special projects or wages paid to special project em-  
14 ployes shall offset the cost of patient services. Revenues from meals sold to visitors  
15 or employes, from drugs sold to persons who are not patients, from the operation of  
16 gift shops or parking lots or from the provision of televisions, radios or telephones to  
17 patients shall offset the cost of these services, subject to the limitation that the  
18 amount of revenue offset from any of these services may not exceed the cost of the  
19 service.

20           **(3)** Purchase discounts, the amount by which actual payments by government  
21 payers exceed estimated payments under s. 196.999 (1) (a) and allowances and re-  
22 funds of expenses shall be subtracted from the calculation of financial requirements  
23 under sub. (1). Revenues from invested funds shall also be subtracted from the cal-  
24 culation of financial requirements but may not offset an amount that exceeds the  
25 hospital's interest expenses.

1           (4) After the sale of a hospital, the commission may calculate depreciation un-  
2           der sub. (1) based on a revaluation of the hospital's plant and equipment in order to  
3           determine its reasonable value. The revaluation shall be based on appraisals con-  
4           ducted by 2 independent appraisers, one of whom shall be selected by the hospital  
5           and one by the commission. The hospital shall pay the cost of both appraisals.

6           **196.996 Standards for decision making.** The commission and its staff shall  
7           review and evaluate each hospital's proposed financial requirements and rate re-  
8           quest in light of a variety of standards for decision making, including:

9           (1) The need to reduce the rate of hospital cost increases while preserving the  
10          quality of health care in all parts of the state and taking into account the financial  
11          viability of economically and efficiently operated hospitals.

12          (2) Comparisons with prudently administered hospitals of similar size or pro-  
13          viding similar services that offer quality health care with sufficient staff. In classify-  
14          ing hospitals according to size and services, the commission shall consider volume,  
15          intensity and educational programs and special services provided by hospitals.

16          (3) A variety of cost-related trend factors based on nationally or regionally rec-  
17          ognized economic models.

18          (4) The special circumstances of rural hospitals and teaching hospitals.

19          (5) The past budget and rate experiences of the hospital that submits the rate  
20          request.

21          (6) Findings of the utilization review program under s. 196.9993 (3) concerning  
22          the hospital that submits the rate request.

23          **196.997 Initial determinations.** (1) After reviewing a hospital's proposed  
24          financial requirements, the commission may disallow any of the following:

1 (a) Costs associated with medical services that a utilization review program un-  
2 der s. 196.9993 determines are medically unnecessary or inappropriate.

3 (b) Forty percent of the amount by which patient revenue generated by the hos-  
4 pital during its previous fiscal year exceeds 104% of the hospital's budgeted patient  
5 revenue for that year, if the hospital's annual gross patient revenue is less than  
6 \$5,000,000, adjusted as provided in s. 196.9995, or exceeds 102% of the hospital's  
7 budgeted patient revenue for that year, if the hospital's annual gross patient revenue  
8 equals or exceeds \$5,000,000, adjusted as provided in s. 196.9995. The commission  
9 shall, by rule, establish a procedure under which hospitals whose variable costs ex-  
10 ceed 65% are subject to a lesser disallowance under this paragraph.

11 (c) Rate overcharges of the hospital that occurred in a prior year and for which  
12 payers have not been reimbursed.

13 (d) The amount by which incremental expenses that are associated with the  
14 cost of a capital project exceed 105% of the expenses projected in the hospital's ap-  
15 plication for approval of the capital project. This paragraph does not apply if any of  
16 the following applies:

17 1. The hospital demonstrates to the satisfaction of the commission that the ex-  
18 cess was due to conditions beyond its control.

19 2. The excess occurs more than 3 years after completion of the capital project.

20 (e) Costs that the commission determines under s. 196.996 are unreasonable.

21 (f) Wages that the record demonstrates to be excessive. In making determina-  
22 tions under this paragraph, the commission shall consider the wage levels offered by  
23 hospitals located in a relevant geographic area surrounding the hospital that sub-  
24 mitted the rate request as well as by hospitals of similar size or providing similar ser-  
25 vices. In addition, the commission shall consider the hospital's ability to attract ade-

1       quate staff and the wage trends in nonregulated, related sectors of the Wisconsin  
2       economy.

3           (g) Amounts paid for services regulated under s. 111.18 (2) (a) 1.

4           **(2)** (a) After reviewing the hospital's financial requirements and rate request,  
5       the commission staff shall suggest any disallowances authorized under sub. (1) and  
6       shall submit its rate recommendations to the hospital and commission. If it considers  
7       the hospital proposal unacceptable, the commission staff shall explain to the hospital  
8       what facts and standards cause it to disagree and shall submit alternate recommen-  
9       dations. A hospital that fails to accept any part of the commission staff's recommen-  
10      dations shall request a settlement conference under s. 196.998.

11          (b) 1. Except as provided in subd. 2., the commission staff shall submit its rec-  
12      ommendations under par. (a) within 60 days after the date that review commences  
13      under s. 196.994 (1), even if the commission staff determines that the data provided  
14      by the hospital for a scheduled review are incomplete. The commission staff may,  
15      however, recommend a disallowance or an alternate rate, including no rate increase,  
16      on the grounds of insufficient data.

17          2. a. The commission staff may extend the deadline specified in subd. 1. by 15  
18      days if it determines that the rate request submitted involves particularly complex  
19      issues of fact.

20          b. The deadline specified in subd. 1. may be extended with the consent of the  
21      hospital and the commission staff.

22           **196.998 Review of determinations.** (1) Any hospital that disputes any part  
23      of the recommendations of the commission staff under s. 196.997 shall, within 10  
24      days after the recommendations are submitted under s. 196.997 (2), request a settle-  
25      ment conference between its representatives and the commission staff for the pur-

1 pose of resolving their differences or defining more precisely the nature of their dif-  
2 ferences. The chairperson of the commission, or a commissioner designated by the  
3 chairperson, shall preside over each settlement conference. Within 20 days after the  
4 hospital requests a settlement conference, the settlement conference shall be com-  
5 pleted.

6 (2) Any hospital that is dissatisfied with the results of its settlement conference  
7 under sub. (1) is entitled to a hearing before the commission under sub. (3) if it sub-  
8 mits a timely request. Each request for a hearing shall be submitted to the commis-  
9 sion within 10 days after the completion of the settlement conference. The hospital  
10 may present testimony based on any standard for decision making listed in s.  
11 196.996. All questions of fact shall be determined without ascribing greater weight  
12 to evidence presented by commission staff than to evidence presented by any other  
13 party solely due to its presentation by the staff.

14 (3) (a) Informal hearings shall be conducted before at least 2 commissioners.  
15 Sworn testimony is required only if the presiding commissioners so specify. The com-  
16 missioners may establish time limits for cross-examination of witnesses and rebut-  
17 tal arguments and may limit the number of persons who may appear at the hearing.  
18 Rules of evidence, except the rule that evidence be relevant to the issues presented,  
19 do not apply to informal hearings.

20 (b) A hospital that requests an informal hearing shall present the reasons sup-  
21 porting its proposed rate increase and financial requirements. Commission staff  
22 shall respond by explaining its disagreement and its alternate recommendations.  
23 Within the time limits specified in par. (a), the hospital, parties to the review and  
24 commission staff may each cross-examine witnesses and rebut arguments pres-  
25 ented. The hospital, parties to the review and the commission staff may use outside



1 experts to present their position. The presiding commissioners may impose an over-  
2 all time limit on the length of the hearing.

3 (c) The commission may, by order, conduct a class 1 contested case proceeding  
4 under ch. 227 in place of an informal hearing under pars. (a) and (b).

5 (5) The commission shall keep a complete record of all hearings and investiga-  
6 tions conducted under sub. (3) using a stenographic, electronic or other method to re-  
7 cord all testimony presented. The commission shall provide a transcribed, certified  
8 copy of all or any part of this record on the request of any party to a hearing or inves-  
9 tigation, but may charge the requester for the costs involved.

10 (6) (a) Any person may request a hearing under s. 227.44, regardless of whether  
11 any other hearing is authorized by law or is authorized at the discretion of the com-  
12 mission or whether any other proceeding is authorized by rule of the commission,  
13 subject to the limitation that no person may receive more than one contested case  
14 hearing concerning a particular act or failure to act by the commission.

15 (b) Notwithstanding par. (a), no person may request a hearing under s. 227.44  
16 pertaining to the subject matter of a hearing under sub. (3).

17 (c) The right to a hearing under s. 227.44, as specified in this subsection, applies  
18 only to subject matter pertaining to this subchapter.

19 **196.999 Commission orders.** (1) (a) The commission shall determine allow-  
20 able financial requirements under s. 196.995 and disallowances under s. 196.997.  
21 From the difference between these amounts, the commission shall subtract the hos-  
22 pital's estimated relief payments and medical assistance payments under ch. 49 and  
23 medicare payments under 42 USC 1395 to 1395ccc, unless the commission deter-  
24 mines that the hospital's estimates are incorrect, in which case the commission shall  
25 subtract its own estimates of the hospital's relief, medical assistance and medicare

1 payments. The commission shall, by order, establish maximum rates that allow the  
2 hospital to generate revenue sufficient to provide this remainder. The commission  
3 shall, by rule, establish acceptable methods of estimating payments by relief, medi-  
4 cal assistance and medicare under this paragraph. Each hospital shall choose one  
5 of these methods and use it consistently unless the commission authorizes the hospi-  
6 tal to change its method.

7 (b) Unless the hospital requests a hearing under s. 196.998 (3), the commission  
8 shall issue its order under par. (a) within 15 days after the commission staff submits  
9 its recommendations or, if the hospital requests a settlement conference under s.  
10 196.998 (1), within 15 days after the commission determines that the hospital will  
11 not seek a hearing following the conclusion of the settlement conference. If the hospi-  
12 tal disputes only part of the recommendations of the commission staff, the commis-  
13 sion may establish maximum rates under par. (a) concerning the recommendations  
14 with which the hospital agrees prior to the conclusion of the hearing under s. 196.998  
15 (3).

16 (c) If the hospital disputes the recommendations of the commission staff and  
17 a hearing is held under s. 196.998 (3) (c), the commission shall establish by order  
18 maximum rates for the hospital's year under review at the conclusion of the hearing.  
19 If the commission conducts an informal hearing under s. 196.998 (3) (a) and (b), it  
20 shall issue its order within 50 days after the date on which the hospital requested  
21 the hearing.

22 (d) 1. The commission shall state findings of fact and the reasons supporting  
23 each order that it issues concerning financial requirements and rates. If the commis-  
24 sion denies any part of a rate request, it shall also specify, as part of its order, any  
25 financial requirements that it has disallowed.

1           2. Any hospital may apply an increase in its rates selectively, if the aggregate  
2 increase in its rates does not exceed the amount authorized by the commission. Prior  
3 to instituting its rate increase, the hospital shall explain to the commission its meth-  
4 od of applying the rate increase and allow the commission 5 working days, as defined  
5 in s. 227.01 (14), to determine if the aggregate increase in rates exceeds the autho-  
6 rized amount. Failure to disapprove the hospital's method of applying the rate in-  
7 crease within this period constitutes an approval. If the commission approves the  
8 hospital's method of applying the rate increase, the commission may not challenge  
9 the method prior to the date of a succeeding review under s. 196.994 (1) except as pro-  
10 vided in sub. (4) (a). If the commission disapproves the hospital's method of applying  
11 the rate increase, it shall recommend an alternate method. If the hospital fails to  
12 modify its method of applying the rate increase, the commission may challenge the  
13 method in circuit court. In addition to any other remedy the court may impose under  
14 s. 196.9994, if the court finds that the hospital's method generates an aggregate in-  
15 crease in the hospital's rates that is inconsistent with the amount authorized by the  
16 commission, the hospital shall forfeit an amount equal to 50% of the amount over-  
17 charged and shall comply with the alternate method recommended by the commis-  
18 sion or with any other method ordered by the court that the court finds more consis-  
19 tent with the commission's order. No hospital may change a method of applying its  
20 rate increase that has received the commission's approval without submitting the  
21 changes to the commission for its approval under this subdivision.

22           3. Any hospital receiving a rate increase that may only commence between the  
23 2nd and 7th months of its fiscal year may make an adjustment to the rate increase,  
24 that applies to that fiscal year only, in order to generate an amount of revenue equal

1 to the amount that would have been generated if the hospital could have commenced  
2 the rate increase beginning with the first month of its fiscal year.

3 (e) Except as provided in s. 196.9991, even if a party seeks judicial review of  
4 a commission order, the affected hospital may continue to bill payers at the rates es-  
5 tablished by the commission. No hospital that bills payers under this paragraph ad-  
6 versely affects its right to contest the rates established by the commission.

7 **(1m)** Notwithstanding sub. (1) (b) and ss. 196.994 (1), 196.997 (2) and 196.998,  
8 at the request of a hospital the commission may waive the procedures for review of  
9 a rate request and issue an interim order in an emergency.

10 **(2)** The commission shall determine the rates of each hospital independently  
11 using criteria specified in s. 196.996, but in making these determinations the com-  
12 mission may use methods of identifying similar hospitals.

13 **(3)** The commission may promulgate rules establishing a system that defines  
14 rates as aggregate charges based on case mix measurements if the commission sub-  
15 mits its proposed system to the joint committee on finance under s. 13.10, receives  
16 that committee's approval and holds a public hearing prior to promulgating its rules.  
17 Such a system may not take effect prior to July 1, 1997, shall be consistent with the  
18 standard under s. 196.996 (1), shall take into account the reasonable financial re-  
19 quirements of hospitals and shall ensure quality of care and a reasonable cost to pa-  
20 tients.

21 **(4)** The commission may not:

22 (a) Reduce rates that it has established, prior to the date the commission sched-  
23 ules a succeeding review under s. 196.994 (1), unless the hospital misstated any ma-  
24 terial fact at a prior rate-setting proceeding. Projections on the volume of hospital  
25 services utilized do not constitute material facts under this paragraph.

1 (b) During a succeeding review under s. 196.994 (1), reduce rates from levels  
2 that it has previously established, except in any of the following situations:

3 1. The hospital implements an unauthorized increase in its approved rates, un-  
4 less the increase is trivial.

5 2. The hospital uses the funds that it has prospectively accumulated for an au-  
6 thorized capital project for purposes other than the authorized project.

7 4. The hospital's actual total revenue for its fiscal year exceeds its actual total  
8 financial requirements by more than 10%.

9 (c) Interfere directly in the personal or decision-making relationships between  
10 a patient and the patient's physician, except as provided in ss. 196.9993 and  
11 196.9994 (2). This paragraph does not limit the commission's ability to make deter-  
12 minations under sub. (1) (a) or s. 196.997.

13 (d) Control directly the volume or intensity of hospital utilization, except as  
14 provided in ss. 196.9993 and 196.9994 (2). This paragraph does not limit the commis-  
15 sion's ability to make determinations under sub. (1) (a) or s. 196.997.

16 (e) Restrict the freedom of patients to receive care at a hospital consistent with  
17 their religious preferences or request a hospital that is affiliated with a religious  
18 group to act in a manner contrary to the mission and philosophy of the religious  
19 group.

20 (f) Restrict directly the freedom of hospitals to exercise management decisions  
21 in complying with the rates established by the commission, unless a hospital agrees  
22 to a condition attached to the establishment of particular rates.

23 (g) Require the submission of unrelated financial data from religious groups  
24 affiliated with a hospital.

1           **196.9991 Injunctions of commission orders.** No injunction may be issued  
2 to suspend or stay enforcement of an order of the commission unless all of the follow-  
3 ing occur:

4           **(1)** All parties to the proceeding from which the commission's order was issued  
5 are notified of the petition seeking an injunction, are given an opportunity to appear  
6 at a hearing prior to the issuance of the injunction and are made parties to the pro-  
7 ceeding in circuit court.

8           **(2)** The party seeking the injunction enters into an undertaking by at least 2  
9 sureties at a level that the circuit court finds sufficient to guarantee the payment of  
10 all damages the hospital may sustain by delaying the effect of the commission's order.  
11 This subsection does not apply to a hospital that was a party to the proceeding from  
12 which the commission's order was issued.

13           **196.9992 Expedited review, expedited cases and exempt hospitals. (1)**  
14 The commission may promulgate rules under which hospitals meeting specific crite-  
15 ria receive expedited review of rate requests under this subchapter.

16           **(2)** (a) A hospital whose gross annual patient revenue is less than \$10,000,000,  
17 adjusted as provided in s. 196.9995, for the hospital's last fiscal year is eligible to re-  
18 ceive automatic approval of its rate request if it meets all of the following criteria:

19           1. The commission has conducted a complete review of the hospital's rates and  
20 has set the hospital's rates in a preceding year.

21           2. The hospital requests a rate increase that is less than an inflationary index  
22 consisting of the average of the consumer price index and the hospital market basket  
23 index.

24           (b) Any hospital that receives automatic approval of its rate request under this  
25 subsection shall publish as a class 1 notice under ch. 985, in one or more newspapers

1 likely to give notice to its patients and payers, a list of the price adjustments it is mak-  
2 ing to 100 of its charge elements as specified by the commission. The hospital shall  
3 publish this notice prior to implementing its rate increase.

4 (c) The commission may, by rule, extend automatic approval status under this  
5 subsection to other hospitals.

6 **(2m)** The commission may grant hospitals whose gross annual patient revenue  
7 is less than \$10,000,000, adjusted as provided in s. 196.9995, a rate increase that  
8 takes effect over a 2-year period with an automatic escalation clause taking effect  
9 at the end of the first year. A hospital that receives a 2-year rate increase is not re-  
10 quired to request a rate increase at the end of the first year.

11 **(3)** Any judicial proceeding affecting a rule or decision of the commission shall  
12 be heard and determined as expeditiously as possible.

13 **196.9993 Utilization review program.** (1) The commission shall approve  
14 an all-patient utilization review program for each hospital that shall conform to re-  
15 quirements of federal regulations on utilization review programs. The commission  
16 may evaluate these programs as part of its monitoring functions under s. 196.994 (3).

17 (2) The commission shall contract with one or more independent utilization re-  
18 view programs to develop review standards, and the commission may contract with  
19 any person to monitor implementation of these programs by hospitals and to perform  
20 peer review functions for hospitals that fail to meet the performance standards  
21 adopted by the commission. The commission may not contract with state agencies,  
22 other than the University of Wisconsin System, under this subsection.

23 (3) Each utilization review program the commission approves shall include a  
24 general summary of utilization within the hospital. These programs need not other-

1 wise be identical but shall meet minimum standards established by the commission  
2 and shall do all of the following:

3 (a) Evaluate the medical necessity or appropriateness of care relative to admis-  
4 sions, lengths of stay and ancillary services.

5 (b) Report to the commission, in conjunction with each hospital's submission  
6 of proposed financial requirements, any findings that it has made regarding unne-  
7 cessary or inappropriate medical care utilization and associated costs.

8 **196.9994 Enforcement.** (1) (a) Until the commission establishes different  
9 rates under this subchapter, no hospital may charge any payer an amount exceeding  
10 the rates established as of the effective date of this paragraph ... [revisor inserts  
11 date]. No hospital may charge any payer an amount exceeding the rates established  
12 under this subchapter.

13 (b) The attorney general may seek a judicial remedy to enforce compliance with  
14 par. (a) if the attorney general first notifies the hospital and provides the hospital a  
15 reasonable time to correct a violation. The commission may seek a judicial remedy  
16 to enforce compliance with any statutory requirement or with any rule or order of the  
17 commission if it first notifies the hospital and provides the hospital a reasonable time  
18 to correct a violation. The commission shall commence any action under this para-  
19 graph in the circuit court for the county in which the hospital is located.

20 (c) Any court that finds an intentional failure to comply with the rates under  
21 this subsection may impose a forfeiture of up to \$5,000. Each week that a hospital  
22 continues its intentional failure to comply with the rates constitutes a separate viola-  
23 tion.

24 (2) Neither a hospital nor a physician may be paid for a service that a utiliza-  
25 tion review program under s. 196.9993 determines is medically unnecessary or inap-



1 appropriate. If the hospital or physician has already been paid, the hospital or physi-  
2 cian shall reimburse the payer within 30 days. The commission may commence an  
3 action to enforce this subsection in the circuit court for the county in which the hospi-  
4 tal is located.

5 (3) Any court with jurisdiction over an action brought under this section may  
6 adopt remedies that it finds necessary to enforce compliance. Remedies under this  
7 section apply notwithstanding the existence or pursuit of any other remedy.

8 (4) Any person who intentionally violates an order of a hearing examiner is-  
9 sued under s. 227.46 (7) to protect trade secrets in a contested case brought under  
10 this subchapter shall forfeit \$5,000.

11 **196.9995 Annual adjustments.** The limits on gross annual patient revenue  
12 in ss. 196.997 (1) (b) and 196.9992 (2) (a) (intro.) and (2m) shall be adjusted annually  
13 to reflect annual changes in the average of the consumer price index and the hospital  
14 market basket index.

15 **196.9996 Assessments. (1)** In this section:

16 (a) "Commercial insurance" includes a group or individual disability insurance  
17 policy, as defined in s. 632.895 (1) (a), an employer's self-insured health care plan  
18 and worker's compensation.

19 (b) "Deduction" means the portion of a charge that was incurred by a patient  
20 but was not received from 3rd-party payers or governmental or private payment.  
21 "Deduction" includes charity care but does not include bad debt.

22 (c) "Expense" means the cost of operation, including bad debt, that is charged  
23 to a hospital during the hospital's fiscal year.

24 (d) "Gross patient revenue" means the total charges to medicare, as defined in  
25 s. 49.498 (1) (f), the medical assistance program, other public programs, commercial

1 insurance and other self-payers or nonpublic payers, that are generated by a hospi-  
2 tal from inpatient and outpatient services.

3 (e) "Net income" means total revenue and nonoperating gains in excess of ex-  
4 penses and nonoperating losses.

5 (f) "Net patient revenue" means gross patient revenue minus deductions.

6 (g) "Nonoperating gains" means gifts, donations, endowments, return on in-  
7 vestments and any other gains that are not related to patient care.

8 (h) "Nonoperating losses" means state and federal corporate income and real  
9 estate taxes and other losses that are not directly related to patient care or hospital-  
10 related patient services.

11 (i) "Other public programs" include programs operated by or contracted for by  
12 county departments under s. 46.215, 46.22 or 46.23 and the relief program under ch.  
13 49.

14 (j) "Other revenue" means revenue from services, other than health care ser-  
15 vices, provided to patients and revenue from sales to and services provided to nonpa-  
16 tients.

17 (k) "Total revenue" means the sum of net patient revenue and other revenue.

18 **(2)** Beginning July 1, 1997, the commission shall, within 90 days after the com-  
19 mencement of each fiscal year, estimate the total amount of revenue required for ad-  
20 ministration by the commission of this subchapter during that fiscal year and assess  
21 that estimated total amount to hospitals, under the rates established by rule under  
22 s. 196.993 (2) and in proportion to each hospital's respective net income during the  
23 hospital's most recently concluded entire fiscal year. The commission may not assess  
24 under this subsection a hospital that has a net income of 3% or less over the net in-  
25 come for the hospital's next most recently concluded entire fiscal year. Each hospital

1 that is assessed shall pay the assessment by the December 1 following the assess-  
2 ment. The commission shall credit all payments of assessments to the appropriation  
3 under s. 20.155 (3) (gm).

4 **196.9998 Capital expenditure review program. (1) APPLICABILITY.** Begin-  
5 ning on July 1, 1997, no person may do any of the following without first obtaining  
6 the commission's approval:

7 (a) Except as provided in sub. (2), obligate for a capital expenditure, by or on  
8 behalf of a hospital, that exceeds \$1,000,000. The cost of the studies, surveys, plans  
9 and other activities essential to the proposed capital expenditure shall be included  
10 in determining the value of the capital expenditure. Any donation of equipment or  
11 facilities that, if acquired directly, would be subject to review under this section is a  
12 capital expenditure. Any transfer of equipment or facilities for less than fair market  
13 value that, if transferred at fair market value, would be subject to review under this  
14 section is a capital expenditure.

15 (b) Implement services new to the hospital that exceed \$500,000 in a 12-month  
16 period, including an organ transplant program, burn center, neonatal intensive care  
17 program, cardiac program or air transport services; implement other services or pro-  
18 grams specified by the commission by rule; or add psychiatric or chemical dependen-  
19 cy beds.

20 (c) Obligate for an expenditure by or on behalf of a hospital, independent practi-  
21 tioner, limited liability company, partnership, unincorporated medical group or ser-  
22 vice corporation, as defined in s. 180.1901 (2), that exceeds \$500,000 for clinical medi-  
23 cal equipment.

24 (d) Purchase or otherwise acquire a hospital.

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

1           **(2) EXEMPTIONS FROM CAPITAL EXPENDITURE REVIEW.** (a) Subsection (1) does not  
2 apply if a person has, prior to the effective date of this subsection .... [revisor inserts  
3 date], entered into a legally enforceable contract, promise or agreement with another  
4 to do any of the activities specified in sub. (1) (a) to (e).

5           (b) A person may obligate for a capital expenditure by or on behalf of a hospital  
6 without obtaining the approval of the commission if the expenditure is for heating,  
7 air conditioning, ventilation, electrical systems, energy conservation, telecommu-  
8 nications, computer systems or nonsurgical outpatient services, unless any such ex-  
9 penditure is a constituent of another project reviewable under sub. (1) or unless any  
10 such expenditure would exceed 20% of a hospital's gross annual patient revenue for  
11 its last fiscal year.

12           **(3) INNOVATIVE MEDICAL TECHNOLOGY EXEMPTION.** (a) In this subsection:

13           1. "Clinical trial" means clinical research conducted under approved protocols  
14 in compliance with federal requirements applicable to investigations involving hu-  
15 man subjects, including the requirement for an informed consent advising the pa-  
16 tient clearly of the risks associated with participating in the clinical development  
17 and evaluation project.

18           2. "Innovative medical technology" means equipment or procedures that are  
19 potentially useful for diagnostic or therapeutic purposes and that introduce new  
20 technology in the diagnosis and treatment of illness.

21           (b) The commission may grant an exemption from the requirements of approval  
22 under this section for the research, development and evaluation of innovative medi-  
23 cal technology, the development of the clinical applications of this technology or the  
24 research, development and evaluation of a major enhancement to existing medical  
25 technology if all of the following occur:

1           1. The commission receives an application for an exemption from a person in-  
2           tending to undertake a capital expenditure in excess of \$500,000 or intending to un-  
3           dertake a substantial change in a health service.

4           2. Prior to applying for an exemption, preliminary animal studies or prelimi-  
5           nary clinical investigation establishes that the innovative medical technology or ma-  
6           jor enhancement to existing medical technology has a reasonable probability of ad-  
7           vancing clinical diagnosis or therapy.

8           3. In the development and evaluation of the clinical applications, the applicant  
9           undertakes scientifically sound studies to determine clinical efficacy, safety, cost-ef-  
10          fectiveness and appropriate utilization levels in a clinical setting.

11          4. The clinical trials, evaluation or research are conducted according to scientif-  
12          ically sound protocols subject to peer review and approval in accord with the require-  
13          ments applicable to investigations and clinical evaluation involving human subjects.

14          5. The innovative medical technology is being installed to conduct necessary  
15          research, development and evaluation.

16          6. The applicant does not include any recovery of capital expenses incurred as  
17          part of an exemption under this subsection in its expense and revenue budget for pur-  
18          poses of rate setting until the applicant receives the approval of the federal food and  
19          drug administration and of the commission under this section for general medical  
20          use. The applicant may recover operating expenses only after all of the following oc-  
21          cur:

22           a. Approval by the federal food and drug administration for safety and efficacy.

23           b. A 3rd party agrees to pay for these expenses.

1 (c) The commission may not grant more than 2 exemptions for any particular  
2 type of innovative medical technology or for any particular major enhancement to  
3 existing medical technology.

4 **(4) PUBLIC HEARING REQUIREMENT.** (a) Any person intending to undertake a proj-  
5 ect or activity subject to this section shall cause to be published a class 1 notice under  
6 ch. 985 in the official newspaper designated under s. 985.04 or 985.05 or, if none ex-  
7 ists, in a newspaper likely to give notice in the area of the proposed project or activity.  
8 The notice shall describe the proposed project or activity and describe the time and  
9 place for the public hearing required under par. (b).

10 (b) No sooner than 30 days after the date of publication of the notice under par.  
11 (a), the person shall conduct a public hearing on the proposed project or activity. The  
12 hearing shall be on the expected impact of the proposed project or activity on health  
13 care costs, the expected improvement, if any, in the local health care delivery system,  
14 and any other issue related to the proposed project or activity. Management staff,  
15 if any, of the person seeking to undertake the project or activity and, if possible, at  
16 least 3 members of the governing board of a not-for-profit health care provider, if  
17 any, seeking to undertake the project or activity shall attend the public hearing to  
18 review public testimony. The person seeking to undertake the project or activity  
19 shall record accurate minutes of the meeting, shall include copies of the minutes and  
20 any written testimony presented at the hearing in an application concerning the  
21 project or activity that is submitted under sub. (7) and shall submit the application  
22 within 10 days after the date of the public hearing.

23 **(5) NOTIFICATION REQUIREMENT.** Any person intending to undertake a project  
24 subject to this section shall notify the commission in writing of this intent at least  
25 30 days prior to submitting an application for review. Any application expires unless

1 the commission declares it complete within one year after the date the applicant noti-  
2 fies the commission of its intent to undertake the project.

3 **(6) APPLICATION FEE.** Each application for review of a project or activity subject  
4 to this section shall be accompanied by a fee that is established in rules promulgated  
5 by the commission. The commission shall promulgate rules that establish applica-  
6 tion fees that are sufficient to fund all of the commission's expenses under this sec-  
7 tion.

8 **(7) REVIEW REQUIREMENTS.** (a) The commission's review of an application be-  
9 gins on the date that it receives a completed application, including the fee under sub.  
10 (6). On or before the 20th day of the month following receipt of a completed applica-  
11 tion, the commission shall send a notice of receipt of a completed application to the  
12 applicant and shall publish a class 2 notice under ch. 985 containing this information  
13 in a daily newspaper with general circulation in the area where the proposed project  
14 would be located.

15 (b) The commission may group applications for the same or similar types of faci-  
16 lities, services or applications that are proposed, for concurrent review. The commis-  
17 sion shall base its review under this paragraph on a comparative analysis of these  
18 applications, using the criteria specified in sub. (8) and a ranking of its priorities.  
19 The applicant has the burden of proving, by a preponderance of the evidence, that  
20 each of the criteria specified in sub. (8) has been met or does not apply to the project.  
21 The commission shall, by rule, establish its review requirements under this para-  
22 graph.

23 **(8) REVIEW CRITERIA.** The commission shall use the following criteria in review-  
24 ing each application under this section, plus any additional criteria that it develops  
25 by rule. The commission shall consider cost containment as its first priority in apply-

1 ing these criteria, and shall consider the recommendations and comments of affected  
2 parties. The commission may not approve any project under this section unless the  
3 applicant demonstrates all of the following:

4 (a) The project is consistent with the state health services plan under sub. (16).

5 (b) A need for the project, as determined by current and projected utilization.

6 (c) The project would efficiently and economically use resources, including fi-  
7 nancing for capital investment and operating expenses, when measured against al-  
8 ternative uses of resources.

9 (d) Sufficient cash reserves and cash flow to pay operating and capital costs.

10 (e) Increases in operating and capital costs resulting from the project are rea-  
11 sonable, including the direct charge to the consumer and the charges to be paid by  
12 medical assistance and by disability insurers. The commission shall determine the  
13 effect on these rates of the applicant's project for review under this paragraph.

14 (f) Financing is available at market rates.

15 (g) Health care personnel are available and would be effectively used.

16 (h) Proposed construction costs are consistent with industry averages.

17 (j) Any proposed addition of area and construction or renovation alternatives  
18 are cost-effective.

19 (k) The project is consistent with efficiency standards and criteria.

20 (L) The applicant is participating in a utilization review program that is appli-  
21 cable to a statistical sampling of all hospital patients regardless of payment source,  
22 that requires public disclosure of all review data in a form useful to the commission  
23 but protects the identities of individual patients and health care professionals and  
24 that is conducted by persons who are free from any substantial conflict of interest.



1 (m) The applicant has prepared a plan acceptable to the commission for the pro-  
2 vision of health care to indigents.

3 **(9) REVIEW PROCESS.** (a) The commission shall hold a public meeting upon the  
4 request of an affected party to review projects seeking approval, at which all affected  
5 parties may present testimony. The commission may consider projects seeking ap-  
6 proval that are within a related area at joint public meetings. The commission shall  
7 keep minutes or other record of testimony presented at the public meeting.

8 (b) The commission shall issue an initial finding to approve or reject the project  
9 within 75 days after the date that it publishes its notice under sub. (7) (a), unless all  
10 applicants consent to an extension of this period. The commission may not require  
11 substantial modification of any project as a condition of approval without the appli-  
12 cant's consent. The commission may extend by 60 days the review cycle of all projects  
13 being reviewed concurrently under sub. (7) (b), if it finds that completing the reviews  
14 within 75 days after the date it publishes its notice under sub. (7) (a) is not practicable  
15 due to the volume of applications received. The commission shall submit its decision  
16 to the applicant. Unless the applicant makes a timely request for a hearing under  
17 par. (c), the commission's initial finding under this paragraph is its final action.

18 (c) 1. Any applicant whose project is rejected may request a public hearing to  
19 review the commission's initial finding under par. (b), if the request is submitted in  
20 writing within 10 days after the commission's decision, or may initiate a hearing un-  
21 der s. 227.42. The commission shall commence the hearing under par. (b) within 30  
22 days after receiving a timely request, unless all parties consent to an extension of this  
23 period.

1           2. Except as provided in s. 227.42, ss. 227.43 to 227.50 do not apply to hearings  
2 under this paragraph. The commission shall promulgate rules to establish all of the  
3 following:

4           a. Procedures for scheduling hearings under this paragraph.

5           b. Procedures for conducting hearings under this paragraph, including meth-  
6 ods of presenting arguments, cross-examination of witnesses and submission of ex-  
7 hibits.

8           c. Procedures following the completion of a hearing under this paragraph, in-  
9 cluding the establishment of time limits for issuance of a decision.

10          d. Standards relating to ex parte communication in hearings under this para-  
11 graph.

12          e. Procedures for reconsideration and rehearing.

13          3. The commission shall issue all decisions in writing.

14          4. Each applicant at any hearing under this paragraph has the burden of prov-  
15 ing, by clear and convincing evidence, that the commission's initial finding was con-  
16 trary to the weight of the evidence on the record when considered as a whole, arbi-  
17 trary and capricious or contrary to law.

18          **(10) JUDICIAL REVIEW.** Any applicant adversely affected by a decision of the com-  
19 mission under sub. (9) (c) may petition for judicial review of the decision under s.  
20 227.52. The scope of judicial review shall be as provided in s. 227.57 and the record  
21 before the reviewing court shall consist of all of the following:

22           (a) The application and all supporting material received prior to the commis-  
23 sion's initial finding under sub. (9) (b).

24           (b) The record of the public meeting under sub. (9) (a).

1 (c) The commission's analysis of the project and its compliance with the criteria  
2 specified in sub. (8).

3 (d) The record of the hearing held under sub. (9) (c).

4 (e) The commission's decision and analysis issued under sub. (9) (b) or (c) 3.

5 **(11) VALIDITY AND CONTENTS OF AN APPROVAL.** (a) An approval is valid for one  
6 year from the date of issuance. The commission may grant a single extension of up  
7 to 6 months.

8 (b) The commission shall specify the maximum expenditure that may be obli-  
9 gated for a project.

10 (c) Each approval shall include the proposed timetable for implementing and  
11 completing the project and, for the 3-year period following completion of the project,  
12 the project's depreciation and interest schedule, staff required for the project, the  
13 proposed per diem rate needed to pay capital costs and the proposed per diem rate  
14 needed to pay operating costs.

15 **(12) RATE APPROVAL.** Rate reimbursement to cover the cost of the project estab-  
16 lished for medical assistance under s. 49.45 (3) (e) may not exceed the rates proposed  
17 in the approval under sub. (11) (c) by more than 5% during the 3-year period follow-  
18 ing completion of the project. This subsection does not apply if the hospital demon-  
19 strates to the satisfaction of the commission that the excess was due to conditions  
20 beyond its control.

21 **(13) CAPITAL BUDGET REPORTING.** Each hospital shall annually, by January 1,  
22 beginning January 1, 1997, report to the commission a proposed capital budget for  
23 the 5-year period that begins with July 1, 1997. This budget shall specify all antici-  
24 pated capital expenditures subject to this section and anticipated application dates,  
25 if any. This requirement does not apply to the purchase or other acquisitions of a hos-

1 pital under sub. (1) (d). An application under sub. (5) from a hospital to approve a  
2 project is not complete until the commission receives this information.

3 **(14) RULE MAKING.** The commission shall promulgate all of the following rules:

4 (a) Establishing review requirements under sub. (7) (b).

5 (b) Establishing procedures and standards under sub. (9) (c) 2.

6 (c) Establishing a method for defining an acute care service area under sub. (16)

7 (b).

8 (d) Establishing appropriate fees for applications, as specified in sub. (6).

9 **(15) ENFORCEMENT.** (a) No person may recover through charges or rates any  
10 depreciation, interest or principal payments or any operating expenses associated  
11 with a project subject to this section that does not have the commission's approval.

12 (b) 1. If a project whose cost falls below the minimum threshold specified in sub.  
13 (1) (a), (b) or (c) incurs costs exceeding the threshold, the person who operates the  
14 project shall submit an application for the commission's approval under sub. (1).

15 2. If a project that has received the commission's approval incurs a cost overrun,  
16 the person who operates the project shall submit another application for the commis-  
17 sion's approval under sub. (1).

18 (c) No person may subdivide a project to avoid the requirements of this section.

19 (d) The commission's approval of any project is revoked if the capital expendi-  
20 tures specified in the approval have not been obligated, if financing in an amount suf-  
21 ficient to complete the project has not been obtained or if substantial and continuing  
22 progress has not been undertaken within the period specified in the approval. In  
23 addition, the commission's approval of any project is revoked if the person who oper-  
24 ates a project misses any other deadlines specified in the approval and fails to make  
25 a good faith effort to meet these deadlines.

1 (e) The commission may reject the application for approval of a project operated  
2 by any person who has repeatedly been subject to the penalties specified in this sub-  
3 section or may impose restrictions as part of its approval to ensure compliance with  
4 this section.

5 **(16) STATE HEALTH SERVICES PLAN.** (a) The commission shall adopt a state health  
6 services plan using information provided by the office of health care information in  
7 the office of the commissioner of insurance, at least once every 3 years that includes  
8 a description of the hospital system in the state and identifies health care needs and  
9 surpluses with respect to existing health care services, facilities and equipment and  
10 other components the commission finds useful.

11 (b) The commission may not accept any application for a project under this sec-  
12 tion for the addition of hospital beds that would exceed the number of beds described  
13 by the state health services plan for the acute care service area where the project  
14 would be located. The commission shall establish its method for defining an acute  
15 care service area by rule.

16 **SECTION 14.** 632.75 (5) of the statutes is amended to read:

17 632.75 (5) PAYMENTS FOR HOSPITAL SERVICES. No insurer may reimburse a hospi-  
18 tal for patient health care costs at a rate exceeding the rate established under ~~ch. 54,~~  
19 ~~1985 stats., or s. 146.60, 1983 stats., for care provided prior to July 1, 1987~~ subch. II  
20 of ch. 196.

21 **SECTION 15. Nonstatutory provisions.**

22 (1) PUBLIC SERVICE COMMISSION; HOSPITAL RATE SETTING.

23 (a) By September 1, 1996, the public service commission shall submit, under  
24 section 16.515 of the statutes, a request to supplement the appropriation under sec-  
25 tion 20.155 (3) (gm) of the statutes, as created by this act, that details a proposed bud-

1 get for activities of the public service commission under subchapter II of chapter 196  
2 of the statutes, as created by this act.

3 (b) 1. The public service commission shall submit proposed rules required un-  
4 der section 196.993 of the statutes, as created by this act, to the legislative council  
5 staff for review under section 227.15 (1) of the statutes no later than January 1, 1997.  
6 These rules may not take effect before July 1, 1997.

7 2. Using the procedure under section 227.24 of the statutes, the public service  
8 commission shall promulgate rules required under section 196.993 (2) of the stat-  
9 utes, as created by this act, for the period prior to the effective date of the rules sub-  
10 mitted under subdivision 1., but not to exceed the period authorized under section  
11 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2)  
12 (b) of the statutes, the public service commission need not provide evidence of the  
13 necessity of preservation of the public peace, health, safety or welfare in promulgat-  
14 ing the rules under this paragraph.

15 (c) By January 1, 1997, the public service commission shall do all of the follow-  
16 ing:

17 1. Estimate the total amount of revenue required for fiscal year 1996-97 for ad-  
18 ministration by the commission of subchapter II of chapter 196 of the statutes, as  
19 created by this act.

20 2. Assess the estimated total amount under subdivision 1. to hospitals, as de-  
21 fined in section 150.01 (12) of the statutes, under the rates established by rule under  
22 paragraph (b) 2. and in proportion to each hospital's respective net income, as de-  
23 fined in section 196.9996 (1) (e) of the statutes, as created by this act, during the hos-  
24 pital's most recently concluded entire fiscal year, except that the public service com-

1 mission may not assess a hospital that has a net income of 3% or less over the net  
2 income for the hospital's next most recently concluded entire fiscal year.

3 3. Credit all payments of assessments to the appropriation under section  
4 20.155 (3) (gm) of the statutes, as created by this act.

5 (d) Every hospital that is assessed under paragraph (c) 2. shall, by April 1,  
6 1997, pay the entire amount assessed the hospital.

7 **SECTION 16. Initial applicability.**

8 (1) PUBLIC SERVICE COMMISSION; HOSPITAL RATE SETTING. This act first applies to  
9 requests for rate changes submitted under subchapter II of chapter 196 of the stat-  
10 utes, as created by this act, on July 1, 1997.

11 **SECTION 17. Effective dates.** This act takes effect on July 1, 1996, or on the  
12 day after publication, whichever is later, except as follows:

13 (1) HOSPITAL RATE SETTING. The repeal of section 20.155 (3) (a) of the statutes  
14 takes effect on January 1, 1998.

15 (END)