

CHAPTER 150

REGULATION OF HEALTH SERVICES

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SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

150.01 Definitions. In this chapter:

- (1) "Acquisition" includes a change in ownership.
- (2) "Affected party" means the applicant, health systems agencies and other local planning agencies, governmental agencies, other persons providing similar services in the applicant's service area, the public to be served by the proposed project, 3rd party payers and any other person who the department determines to be affected by an application for approval of a project.
- (3) "Approval" means a written statement from the department authorizing a person to commence implementing a project under review.
- (4) "Approved bed capacity" means the bed count collected and verified by the department and by a hospital.
- (5) "Bed capacity" means the number of beds stated on the license of a nursing home issued under s. 50.03.
- (6) "Capital expenditure" means an expenditure by or on behalf of a nursing home or hospital that, under generally accepted accounting principles, is not properly chargeable as an expense of operations or maintenance.
- (7) "Capital expenditure limit" means the maximum amount of capital expenditures that may be approved under subch. III.
- (8) "Community-based residential facility" has the meaning specified in s. 50.01 (1).
- (9) "Cost overrun" means an obligation exceeding the maximum capital expenditure authorized by an approval.
- (10) "Department" means the department of health and social services.
- (11) "Health systems agency" has the meaning specified in 42 USC 300L.
- (12) "Hospital" has the meaning specified in s. 50.33 (1), excluding the facilities exempted by s. 50.39 (3).
- (13) "Medical assistance" has the meaning specified in s. 49.43 (8).
- (14) "Natural disaster" means a flood, ice storm, tornado, severe windstorm, mudslide or other act of destruction resulting from weather or geologic conditions beyond the control of the applicant.

(15) "Nursing home" has the meaning specified in s. 50.01 (3).

(16) "Obligation" means any enforceable contract that is entered into for the construction, leasing, acquisition or permanent financing of a capital asset.

(17) "Person" includes the state.

(19) "Statewide bed limit" means the maximum number of nursing home beds allowed to be licensed under ch. 50.

(20) "Substantial and continuing progress" means spending more than 20% of a project's approved cost, including fees for legal services, planning studies, financing, consultants, inspections, permits, architectural services and interest during construction.

(22) "Working day" has the meaning specified in s. 227.01 (14).

History: 1983 a. 27, 206; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 253. A new health game. Thomas and Wagner. WBB Feb. 1984.

150.03 Rule making; forms. The department shall adopt rules and set standards to administer this chapter. The department shall create the forms to be used and timetables to be followed in applying for an approval and in applying for the renewal or modification of an approval. The department shall issue a statement of the applicable rules and procedures to be followed in reviewing an application with each application form.

History: 1983 a. 27.

150.05 Actions in circuit court. Notwithstanding the existence or pursuit of any other remedy the department may, after consulting with the attorney general, maintain an action in the name of the state in circuit court to restrain or enjoin any violation of this chapter or rules adopted under this chapter.

History: 1983 a. 27.

150.07 Subdividing projects prohibited. No person may subdivide a project to avoid the requirements of this chapter. Transactions separated by 5 years or less that are components of an overall plan for meeting patient care objectives are part of one project.

History: 1983 a. 27.

150.09 Staff. The department may employ staff as needed to administer this chapter.

History: 1983 a. 27.

150.11 Enforcement. (1) The department may refuse to issue or renew any license for a nursing home, and any approval for a hospital, that fails to comply with this chapter.

(2) No person may recover through charges or rates any depreciation, interest or principal payments or any operating expenses associated with a project subject to this chapter that does not have the department's approval.

(3) (a) If a project whose cost falls below the minimum threshold specified in s. 150.21 (3) or (4) or 150.61 (1), (2) or (3) incurs costs exceeding the threshold, the person who operates the project shall submit an application for the department's approval under s. 150.21 or 150.61.

(b) If a project that has received the department's approval incurs a cost overrun, the person who operates the project shall submit another application for the department's approval under s. 150.21 or 150.61.

(c) Any person required to submit an application under this subsection for the department's approval under s. 150.21 shall comply with the time limits for submission of applications under s. 150.33. The department shall afford an applicant under this subsection a reasonable time to obtain its approval but if it rejects the application it may refuse to issue or renew a license or approval, as specified in sub. (1), and costs associated with the project may not be recovered through charges or rates, as specified in sub. (2). If the department approves the project it shall impose a forfeiture on the person who operates the project of not less than 10% and not more than 50% of the costs exceeding the threshold under par. (a) or of the cost overrun under par. (b). Project approval takes effect only after payment of the forfeiture has been made.

(4) The department's approval of any project is revoked if the capital expenditures specified in the approval have not been obligated, if financing in an amount sufficient to complete the project has not been obtained or if substantial and continuing progress has not been undertaken within the period specified in the approval. In addition, the department's approval of any project is revoked if the person who operates a project misses any other deadlines specified in the approval and fails to make a good faith effort to meet these deadlines.

(5) The department may reject the application for approval of a project operated by any person who has repeatedly been subject to the penalties specified in this section or may impose restrictions as part of its approval to ensure compliance with this chapter.

History: 1983 a. 27; 1985 a. 72.

150.13 Fees. Any person applying for approval under this chapter shall pay an application fee equal to 0.37% of the estimated project cost, but not less than \$1,850 and not more than \$37,000. No application is complete without payment of the correct fee.

History: 1983 a. 27.

150.15 Indexing dollar thresholds. The department shall annually adjust the dollar thresholds under ss. 150.01 (21) and 150.61 (1) to (3) to reflect changes in the composite construction cost index, as determined by the federal department of commerce. On or before January 1, the department shall annually report its adjustments under this section to the joint committee on finance for its consideration and recommendations.

History: 1983 a. 27.

SUBCHAPTER II

RESOURCE ALLOCATION PROGRAM; LONG-TERM CARE

150.21 Applicability. This subchapter applies to any person who intends to engage in any of the following activities:

(1) The construction or total replacement of a nursing home.

(2) An increase in the bed capacity of a nursing home.

(3) A capital expenditure that exceeds \$600,000 by or on behalf of a nursing home.

(4) An expenditure that exceeds \$600,000 for clinical equipment by or on behalf of a nursing home.

History: 1983 a. 27.

150.27 Limitation on per diem rates. The per diem rates stated in an application being reviewed under this subchapter are the maximum allowable reimbursement that may be granted by the department for the first full year following licensure of the new beds or completion of the approved project. If the medical assistance reimbursement formula under s. 49.45 (6m) generates per diem rates that are less than those stated in the application under review, the department shall use the lower rates.

History: 1983 a. 27; 1985 a. 29 s. 3200 (23).

NOTE: During the period 7-20-85 to 6-30-87, "reimbursement formula" is changed to "payment formula" by 85 Act 29.

150.29 Approval requirement. (1) No person may enter into an obligation for a project described in s. 150.21 or engage in activities described in that section without the department's prior approval.

(2) In its approval of any project the department shall specify the total number of approved additional beds and the maximum capital expenditure and per diem rates permitted.

History: 1983 a. 27.

150.31 Statewide bed limit. (1) In order to enable the state to budget accurately for medical assistance and to allocate fiscal resources most appropriately, the maximum number of licensed nursing home beds statewide is 51,959 and the maximum number of beds statewide in facilities primarily serving the developmentally disabled is 3,512. The department may decrease these limits by the amount of any reduction in the actual number of available beds in accordance with criteria promulgated by the department by rule. The department may adjust these limits on licensed beds as provided in subs. (2) to (4). The department shall also biennially recommend changes to this limit based on the following criteria:

(a) The number of licensed nursing home beds.

(b) The number of nursing home beds approved under s. 150.06, 1981 stats., for which obligations have been entered into but that have not yet been licensed and have not had their certificates of need voided.

(c) The total number of additional nursing home beds approved under s. 150.29.

(d) The availability of alternatives less costly than increasing the number of nursing home beds to provide long-term care.

(e) The amount of medical assistance funds available or to be made available in the following biennial executive budget for additional nursing home beds.

(f) The cost of providing additional nursing home beds.

(2) The department may increase the statewide bed limit specified in sub. (1) to account for the conversion of community-based residential facilities to nursing homes in order to maintain medical assistance certification, as provided in s. 49.45 (16).

(3) The department may decrease the statewide bed limit specified in sub. (1) to account for nursing home beds that are not set up or not staffed due to life safety code or physical plant requirements under s. 50.04, but that have not been permanently removed from the nursing home's bed capacity. In addition, the department may decrease the statewide bed limit specified in sub. (1) to account for beds closed under a medical assistance waiver, as specified in 42 USC 1396n (c) or under other medical assistance waivers specified in 42 USC 1396 to 1396n.

(4) The department may decrease the statewide bed limit in facilities primarily serving the developmentally disabled in order to account for any decreased use of beds at the state centers for the developmentally disabled due to the community integration program under s. 46.275.

(5) The department may not approve or license any additional nursing home beds if the addition of those beds would exceed the limits established under subs. (1) to (4).

(6) The department may allocate or distribute nursing home beds in a manner, developed by rule, that is consistent with the criteria specified in sub. (1) (a) to (f) and s. 150.39.

History: 1983 a. 27; 1985 a. 29.

150.33 Requests for projects. (1) At least once each year the department shall publish a class 2 notice under ch. 985 concerning the number of additional nursing home beds, if any, to be allowed in each of its health planning areas. The department shall define the boundaries of these areas by rule. The notice shall state the procedures by which any person may apply and receive approval for those beds.

(2) The department shall annually publish a class 2 notice under ch. 985 soliciting from each health planning area applications that involve capital expenditures for a nursing home in excess of \$600,000 but that do not involve the addition of beds, applications that propose to replace all or a portion of an existing nursing home and applications that propose to add nursing home beds in any health planning area.

(3) The department shall provide forms for submitting applications but may only accept applications submitted within 60 days after it publishes a notice under sub. (1) or (2).

(4) The department may accept any application that is not filed within the time limit specified in sub. (3) if it involves a capital expenditure of over \$600,000 but does not increase the bed capacity of a nursing home or totally replace an existing nursing home and if it is developed under a plan of correction, as defined in s. 50.01 (4r), previously approved by the department, or if it involves a cost overrun submitted under s. 150.11 (3). The department shall review such a project within 60 days after receiving a completed application according to procedures it develops by rule. No person may submit an application under this subsection without the department's prior written authorization.

History: 1983 a. 27.

150.35 Review process. (1) The department shall review each application it receives for completeness. If the department finds that the application is incomplete, it shall notify the applicant of the information required within 10 working days after receiving the application. Each applicant shall provide any required additional information within 30 days following the closing date for accepting applications specified in s. 150.33 (3). The department may not accept for review any incomplete application if it fails to receive the additional information within this 30-day period until it issues another public notice soliciting applications under s. 150.33 (1) or (2).

(2) The department shall issue a class 2 notice under ch. 985 within 20 days after the date on which it declares all applica-

tions complete under sub. (1), listing all applicants and describing their projects. Each health systems agency shall hold a public meeting upon the request of an affected party to review projects seeking approval in its service area, at which all affected parties may present testimony. The health systems agency shall make recommendations on these projects within 60 days after the department issues its notice declaring all applications complete. The health systems agency shall keep minutes or other record of testimony presented at the public meeting and shall send a copy of this record, plus its recommendations, to the department. If an applicant seeks approval of a project outside the service area of any health systems agency, the department shall conduct the public meeting.

(3) The department shall issue an initial finding to approve or reject the project within 75 days after the date it publishes its notice under sub. (2), unless all applicants consent to an extension of this period. The department may extend by 60 days the review cycle of all projects being concurrently reviewed under sub. (2), if it finds that completing the reviews within 75 days after the date it publishes its notice under sub. (2) is not practicable due to the volume of applications received from any health planning area. The department shall base its initial finding on a comparative analysis of applications, relying on the criteria specified in s. 150.39 and the recommendations received from the health systems agency. The applicant has the burden of proving, by a preponderance of the evidence, that each of the criteria specified in s. 150.39 has been met or does not apply to the project. The department may approve fewer additional nursing home beds than allowed by the statewide bed limit if the cost of adding those beds exceeds the medical assistance allocation for new beds projected in s. 150.31 (1) (e). Unless an adversely affected applicant or health systems agency makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final action.

(4) (a) Any applicant whose project is rejected or any adversely affected health systems agency may request a public hearing to review the department's initial finding under sub. (3), if the request is submitted in writing within 10 days after the department's decision. The department shall commence the hearing within 30 days after receiving a timely request, unless all parties consent to an extension of this period.

(b) Sections 227.42 to 227.50 do not apply to hearings under this subsection. The department shall adopt rules to establish:

1. Procedures for scheduling hearings under this subsection.

2. Procedures for conducting hearings under this subsection, including methods of presenting arguments, cross-examination of witnesses and submission of exhibits.

3. Procedures following the completion of a hearing under this subsection, including the establishment of time limits for issuance of a decision.

4. Standards relating to ex parte communication in hearings under this subsection.

5. Procedures for reconsideration and rehearing.

(c) The department shall issue all decisions in writing.

(d) Each applicant at any hearing under this subsection has the burden of proving, by clear and convincing evidence, that the department's initial finding was contrary to the weight of the evidence on the record when considered as a whole, arbitrary and capricious or contrary to law.

History: 1983 a. 27; 1985 a. 182 s. 57.

150.39 Review criteria and standards. The department shall use the following criteria in reviewing each application

under this subchapter, plus any additional criteria it develops by rule. The department shall consider cost containment as its first priority in applying these criteria, and shall consider the recommendations of health systems agencies and the comments of affected parties. The department may not approve any project under this subchapter unless the applicant demonstrates:

(1) The medical assistance funds appropriated are sufficient to reimburse the applicant for providing the nursing home care.

(2) The cost of renovating or providing an equal number of nursing home beds or of an equal expansion would be consistent with the cost at similar nursing homes, and the applicant's per diem rates would be consistent with those of similar nursing homes.

(3) The project does not conflict with the statewide bed limit under s. 150.31.

(4) A need for additional beds in the health planning area where the project would be located.

(5) The project is consistent with local plans for developing community-based services to provide long-term care.

(6) Health care personnel, capital and operating funds and other resources needed to provide the proposed services are available.

(7) The project can be undertaken within the period of validity of the approval and completed within a reasonable period thereafter.

(8) Appropriate methods alternative to providing nursing home care in the health planning area are unavailable.

(9) The project is consistent with the state health plan created under s. 14.25 (1) (c).

(10) The quality of care to be provided is satisfactory, as determined by:

(a) The department's investigations.

(b) Materials submitted by the applicant, including independent evaluations of performance in nursing homes owned or operated by the applicant and patient satisfaction surveys.

(c) Recommendations from affected parties concerning the quality of care provided in nursing homes owned or operated by the applicant.

History: 1983 a. 27.

150.40 Redistribution of closed beds. (1) The department shall redistribute within a county the nursing home beds made available as a result of a nursing home closure within that county if all of the following apply at the time of the closure:

(a) The number of other nursing home beds for each 1,000 persons 65 years of age or over in the county is less than 80% of the statewide average of nursing home beds for each 1,000 persons 65 years of age or over.

(b) The total occupancy level for the other nursing homes in the county is equal to or more than the statewide average nursing home occupancy rate.

(2) Subsection (1) does not apply to the following:

(a) Nursing home beds closed under a plan approved by the department under s. 46.277 (3) (b), as a result of the relocation of former residents to community-based settings.

(b) Facilities primarily serving the developmentally disabled.

History: 1985 a. 29.

150.41 Approvals not transferable. No person may transfer through sale, lease or donation any approval granted under this subchapter. The sale, lease or donation of a nursing home before the completion or licensure of a project at that nursing home voids the approval. This section does

not apply to transfers of stock within a corporation that do not alter the controlling interest in the corporation.

History: 1983 a. 27.

150.43 Judicial review. Any applicant or health systems agency adversely affected by a decision of the department under s. 150.35 (4) may petition for judicial review of the decision under s. 227.52. The scope of judicial review shall be as provided in s. 227.57 and the record before the reviewing court shall consist of:

(1) The application and all supporting material received prior to the department's decision under s. 150.35 (3).

(2) The recommendations of the health systems agency or of the department under s. 150.35 (2).

(3) The record of the public meeting under s. 150.35 (2).

(4) The department's analysis of the project and its compliance with the criteria specified in s. 150.39.

(5) Concluding briefs and arguments at a hearing and the findings of fact of the hearing examiner at the hearing under s. 150.35 (4).

(6) The department's findings and conclusions issued under s. 150.35 (3).

History: 1983 a. 27; 1985 a. 182 s. 57.

150.45 Validity of an approval. (1) An approval is valid for one year from the date of issuance. The department may grant a single extension of up to 6 months, but only if a strike against or bankruptcy of a contractor, subcontractor or major supplier previously committed to the project occurs or if a fire or natural disaster significantly delays or damages the project.

(2) The department shall specify the maximum capital expenditure that may be obligated for a project.

(3) Any person whose project has been approved under this subchapter shall document in writing, on forms developed by the department, the progress of the project. The person shall submit these forms semiannually until the project is completed. On these forms, the person shall:

(a) Identify the project and the approval holder.

(b) Specify the date of approval.

(c) Describe the stages of the project that are complete.

(d) Report on the project's status, including any deficiencies.

(e) Identify any cost overrun and propose changes in the project necessary to reduce costs, so as not to exceed the maximum approved capital expenditure.

(f) Estimate the date that uncompleted stages of the project will be completed.

History: 1983 a. 27.

SUBCHAPTER III

CAPITAL EXPENDITURE REVIEW PROGRAM

150.61 Applicability. No person may do any of the following without first obtaining the department's approval:

(1) Except as provided in s. 150.613, obligate for a capital expenditure, by or on behalf of a hospital, that exceeds the limits set forth in s. 150.615, all as adjusted under s. 150.15. The cost of the studies, surveys, plans and other activities essential to the proposed capital expenditure shall be included in determining the value of the capital expenditure. Any donation of equipment or facilities that, if acquired directly, would be subject to review under this subchapter is a capital expenditure. Any transfer of equipment or facilities for less than fair market value that, if transferred at fair market value, would be subject to review under this subchapter is a capital expenditure.

(2) Implement an organ transplant program, burn center, neonatal intensive care program, cardiac program or air transport services or add psychiatric or chemical dependency beds.

(3) Obligate for an expenditure, by or on behalf of a hospital, independent practitioner, partnership, unincorporated medical group or service corporation as defined in s. 180.99, that exceeds \$1,000,000 for clinical medical equipment, as adjusted under s. 150.15.

(4) Purchase or otherwise acquire a hospital.

(5) Add to a hospital's approved bed capacity.

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

History: 1983 a. 27, 538; 1985 a. 29.

150.613 Exemptions from capital expenditure review. A person may obligate for a capital expenditure, by or on behalf of a hospital, without obtaining the approval of the department if the expenditure is for heating, air conditioning, ventilation, electrical systems, energy conservation, telecommunications, computer systems or nonsurgical outpatient services, unless any of the above is a constituent of another project reviewable under s. 150.61 or unless expenditures for any of the above would exceed 20% of a hospital's gross annual patient revenue for its last fiscal year.

History: 1985 a. 29.

150.615 Thresholds for capital expenditures. (1) The capital expenditure limit shall be \$1,000,000.

(2) If the capital expenditure under s. 150.61 (1) is to convert to a new use or to renovate part or all of a hospital, the limit shall be \$1,500,000.

History: 1985 a. 29.

150.62 Moratorium. Notwithstanding any other provision of this chapter, from July 20, 1985, to July 1, 1988, no person may obligate for a capital expenditure, by or on behalf of a hospital, to relocate a hospital, except to relocate a hospital as a result of a consolidation or merger, or to establish a new hospital under s. 150.61 (1).

History: 1985 a. 29.

150.63 Innovative medical technology exemption. (1) In this section:

(a) "Clinical trial" means clinical research conducted under approved protocols in compliance with federal requirements applicable to investigations involving human subjects, including the requirement for an informed consent advising the patient clearly of the risks associated with participating in the clinical development and evaluation project.

(b) "Innovative medical technology" means equipment or procedures that are potentially useful for diagnostic or therapeutic purposes and that introduce new technology in the diagnosis and treatment of illness.

(2) The department may grant an exemption from the requirements of approval under this subchapter for the research, development and evaluation of innovative medical technology, the development of the clinical applications of this technology or the research, development and evaluation of a major enhancement to existing medical technology if all of the following occur:

(a) The department receives an application for an exemption from a person intending to undertake a capital expenditure in excess of \$600,000 or intending to undertake a substantial change in a health service.

(b) Prior to applying for an exemption, preliminary animal studies or preliminary clinical investigation establishes that the innovative medical technology or major enhancement to

existing medical technology has a reasonable probability of advancing clinical diagnosis or therapy.

(c) In the development and evaluation of the clinical applications the applicant undertakes scientifically sound studies to determine clinical efficacy, safety, cost-effectiveness and appropriate utilization levels in a clinical setting.

(d) The clinical trials, evaluation or research are conducted according to scientifically sound protocols subject to peer review and approval in accord with the requirements applicable to investigations and clinical evaluation involving human subjects.

(e) The innovative medical technology is being installed to conduct necessary research, development and evaluation.

(f) The applicant does not include any recovery of capital expenses incurred as part of an exemption under this section in its expense and revenue budget for purposes of rate setting, until the applicant receives the approval of the federal food and drug administration and of the department under this subchapter for general medical use. The applicant may recover operating expenses only after all of the following occur:

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

2. A 3rd party agrees to pay for these expenses.

(3) The department may not grant more than 2 exemptions for any particular type of innovative medical technology or for any particular major enhancement to existing medical technology. The department may not grant further exemptions after December 31, 1985.

History: 1983 a. 85.

150.65 Notification requirement. Any person intending to undertake a project subject to this subchapter shall notify the department in writing of this intent at least 30 days prior to submitting an application for review. Any application expires unless the department declares it complete within one year after the date the applicant notifies the department of its intent to undertake the project.

History: 1983 a. 27.

150.67 Review requirements. (1) The department's review of an application begins on the date it receives a completed application. On or before the 20th day of the month following receipt of a completed application, the department shall send a notice of receipt of a completed application to the applicant and shall publish a class 2 notice under ch. 985 containing this information in a daily newspaper with general circulation in the area where the proposed project would be located.

(2) The department may group applications for the same or similar types of facilities, services or applications that are proposed within the same health planning area, as defined by the department under s. 150.33 (1), for concurrent review. The department shall base its review under this subsection on a comparative analysis of these applications, using the criteria specified in s. 150.69 and a ranking of its priorities. The applicant has the burden of proving, by a preponderance of the evidence, that each of the criteria specified in s. 150.69 has been met or does not apply to the project. The department shall, by rule, establish its review requirements under this subsection.

History: 1983 a. 27.

150.69 Review criteria. The department shall use the following criteria in reviewing each application under this subchapter, plus any additional criteria it develops by rule.

The department shall consider cost containment as its first priority in applying these criteria, and shall consider the recommendations of health systems agencies and the comments of affected parties. The department may not approve any project under this subchapter unless the applicant demonstrates:

(1) The project is consistent with the state health plan created under s. 14.25 (1) (c) and with the state medical facilities plan created under s. 150.83.

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

(3) The project would efficiently and economically use resources, including financing for capital investment and operating expenses, when measured against alternative uses of resources.

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

(5) Increases in operating and capital costs resulting from the project are reasonable, including the direct charge to the consumer, the applicant's projected request for rate increases under ch. 54 and the charges to be paid by medical assistance and by disability insurers. The hospital rate-setting commission under ch. 54 shall determine the effect on these rates of the applicant's project and provide an analysis to the department within 45 days after the department receives a completed application.

(6) Financing is available at market rates.

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

(8) Proposed construction costs are consistent with industry averages.

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

(10) The project is consistent with the standards for decision-making and the rate-setting methodology established under s. 146.60, 1983 stats.

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

(12) The applicant is participating in a utilization review program that is applicable to a statistical sampling of all hospital patients regardless of payment source, that requires public disclosure of all review data in a form useful to the department but protects the identities of individual patients and health care professionals and that is conducted by persons who are free of any substantial conflict of interest.

(13) The applicant has prepared a plan acceptable to the department for the provision of health care to indigents.

History: 1983 a. 27; 1985 a. 29.

150.71 Review process. (1) Each health systems agency shall hold a public meeting upon the request of an affected party to review projects seeking approval in its service area, at which all affected parties may present testimony. The health systems agency shall make recommendations on these projects in accordance with the review criteria specified in s. 150.69 within 60 days after the department issues its notice declaring all applications complete. The health systems agency shall keep minutes or other record of testimony presented at the public meeting and shall send a copy of this record, plus its recommendations, to the department. If an applicant seeks approval of a project outside the service area of any health systems agency, the department shall conduct the public meeting.

(2) The department shall issue an initial finding to approve or reject the project within 75 days after the date it publishes its notice under s. 150.67 (1), unless all applicants consent to an extension of this period. The department may not require

substantial modification of any project as a condition of approval without the applicant's consent. The department may extend by 60 days the review cycle of all projects being reviewed concurrently under s. 150.67 (2), if it finds that completing the reviews within 75 days after the date it publishes its notice under s. 150.67 (1) is not practicable due to the volume of applications received from any health planning area. The department shall submit its decision to the applicant and to the health systems agency that reviewed the application under sub. (1), if any. Unless the applicant or health systems agency makes a timely request for a hearing under sub. (3), the department's initial finding under this subsection is its final action.

(3) (a) Any applicant whose project is rejected or any adversely affected health systems agency may request a public hearing to review the department's initial finding under sub. (2), if the request is submitted in writing within 10 days after the department's decision, or may initiate a hearing under s. 227.42. The department shall commence the hearing under sub. (2) within 30 days after receiving a timely request, unless all parties consent to an extension of this period.

(b) Except as provided in s. 227.42, ss. 227.43 to 227.50 do not apply to hearings under this subsection. The department shall adopt rules to establish:

1. Procedures for scheduling hearings under this subsection.

2. Procedures for conducting hearings under this subsection, including methods of presenting arguments, cross-examination of witnesses and submission of exhibits.

3. Procedures following the completion of a hearing under this subsection, including the establishment of time limits for issuance of a decision.

4. Standards relating to ex parte communication in hearings under this subsection.

5. Procedures for reconsideration and rehearing.

(c) The department shall issue all decisions in writing.

(d) Each applicant at any hearing under this subsection has the burden of proving, by clear and convincing evidence, that the department's initial finding was contrary to the weight of the evidence on the record when considered as a whole, arbitrary and capricious or contrary to law.

History: 1983 a. 27; 1985 a. 182 s. 57.

150.73 Judicial review. Any applicant or health systems agency adversely affected by a decision of the department under s. 150.71 (3) may petition for judicial review of the decision under s. 227.52. The scope of judicial review shall be as provided in s. 227.57 and the record before the reviewing court shall consist of:

(1) The application and all supporting material received prior to the department's initial finding under s. 150.71 (2).

(2) The recommendation of the health systems agency under s. 150.71 (1).

(3) The record of the public meeting under s. 150.71 (1).

(4) The department's analysis of the project and its compliance with the criteria specified in s. 150.69.

(5) The record of the hearing held under s. 150.71 (3).

(6) The department's decision and analysis issued under s. 150.71 (2) or (3) (c).

History: 1983 a. 27; 1985 a. 182 s. 57.

150.75 Validity and contents of an approval. (1) An approval is valid for one year from the date of issuance. The department may grant a single extension of up to 6 months.

(2) The department shall specify the maximum expenditure that may be obligated for a project.

(3) Each approval shall include the proposed timetable for implementing and completing the project and, for the 3-year

period following completion of the project, the project's depreciation and interest schedule, staff required for the project, the proposed per diem rate needed to pay capital costs and the proposed per diem rate needed to pay operating costs.

History: 1983 a. 27.

150.79 Rate setting. Rate reimbursement to cover the cost of the project established for medical assistance under s. 49.45 (3) (e) or established under ch. 54 may not exceed the rates proposed in the approval under s. 150.75 (3) by more than 5% during the 3-year period following completion of the project. This section does not apply if the hospital demonstrates to the satisfaction of the hospital rate-setting commission under ch. 54 that the excess was due to conditions beyond its control.

History: 1983 a. 27; 1985 a. 29.

150.81 Capital budget reporting. Each hospital shall annually report to the department a proposed capital budget for the 5-year period that begins with July 2, 1983. This budget shall specify all anticipated capital expenditures subject to this subchapter. This requirement does not apply to purchase or other acquisitions of a hospital under s. 150.61 (4). Each hospital shall submit its report and its anticipated application

dates to the department no later than 180 days after July 2, 1983. No application from a hospital under s. 150.65 to approve a project is complete until the department receives this information.

History: 1983 a. 27; 1985 a. 72.

150.83 State medical facilities plan. (1) The department shall adopt a state medical facilities plan at least once every 3 years that includes a description of the hospital system in the state and identifies needed or surplus hospital beds. Each plan, except the initial plan adopted under this subsection, shall also include a description of needed and surplus health services plus other components the department finds useful.

(2) The department may not accept any application for a project under this subchapter for the addition of hospital beds that would exceed the number of beds authorized by the state medical facilities plan for the acute care service area where the project would be located. The department shall establish its method for defining an acute care service area by rule.

History: 1983 a. 27.

150.85 Subchapter applicability. Sections 150.61 to 150.83 do not apply after July 1, 1989.

History: 1985 a. 29.