CHAPTER 150

REGULATION OF HEALTH SERVICES

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, 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.

(4m) "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.

(6m) "Capital expenditure limit" means the maximum amount of capital expenditures that may be approved under subch. III.

(6r) "Commission" means the Wisconsin cost containment commission.

(8) "Community-based residential facility" has the meaning specified in s. 50.01 (1g).

(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.

(12) "Hospital" has the meaning specified in s. 50.33 (2), excluding the facilities exempted by s. 50.39 (3).

(12m) "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.

(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 or beds in facilities primarily serving the developmentally disabled 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; 1987 a. 27; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 359; 1991 a. 250.

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 subchs. I and II. The department shall create the forms to be used and timetables to be followed under subchs. I and II 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 under subchs. I and II with each application form.

History: 1983 a. 27; 1991 a. 250.

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, under s. 50.03, any license for a nursing home, and may withhold, suspend or revoke, under s. 50.35, 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 subch. II 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) incurs costs exceeding the threshold, the person who operates the project shall submit an application for the department's approval under s. 150.21.

(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.

(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 (3) and (3m). 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 subchs. I, II and III.

History: 1983 a. 27; 1985 a. 72; 1987 a. 27; 1991 a. 250.

150.13 Fees. Any person applying for approval under subch. I or II 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; 1991 a. 250.

SUBCHAPTER II

RESOURCE ALLOCATION PROGRAM; LONG-TERM CARE

150.21 Applicability. Except as provided in s. 150.46, 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.

(5) The partial or total conversion of a nursing home to a facility primarily serving the developmentally disabled or of a facility primarily serving the developmentally disabled to a nursing home.

History: 1983 a. 27; 1987 a. 27; 1991 a. 120.

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 facility payment 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); 1987 a. 27.

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 51,795 and the maximum number of beds statewide in facilities primarily serving the developmentally disabled is 3,704. The department may adjust these limits on licensed beds as provided in subs. (2) to (6). The department shall also biennially recommend changes to this limit based on the following criteria:

(a) The number of licensed nursing home beds.

(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).

(2m) (a) The department may, on July 1, 1990, increase the statewide bed limit in sub. (1) by not more than 25 beds to permit the permanent and complete conversion of a hospital to a nursing home if the hospital seeking conversion:

1. Had, on January 1, 1990, an approved bed capacity of no more than 50 beds; and

2. Ceases to exist as an acute care hospital by July 1, 1990.

(b) The department shall decrease the number of beds authorized for increase under par. (a) by the amount of any addition in the actual number of available beds within the limit specified in sub. (1), up to 25 beds, that exists on July 1, 1990.

(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 decrease the statewide bed limits specified in sub. (1) to account for any reduction of available beds not included under sub. (3) or (4), in accordance with criteria promulgated by rule.

(6) The department may adjust the statewide bed limits specified in sub. (1) to account for the partial or total conversion of nursing homes to facilities primarily serving the developmentally disabled or of facilities primarily serving the developmentally disabled to nursing homes. The department may promulgate rules limiting the number of nursing home beds converted under this subsection, allocating the beds so converted, and establishing standards for the limitation and allocation.

(7) 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 (6).

(8) 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; 1987 a. 27; 1989 a. 336.

150.32 Distinct-part facilities primarily serving the developmentally disabled. (1) Upon application to the department, the department may approve the operation for a period of time not to exceed 4 years of a distinct part of a nursing home as a facility primarily serving the developmentally disabled. Renewals of approvals initially granted under this subsection may be granted for periods of time not to exceed 4 years and only if all of the following conditions are met by the renewal applicant:

(a) Continued operation of the facility primarily serving the developmentally disabled meets the review criteria and standards under ss. 150.31 (6) and 150.39.

(b) There is continued need, as determined by the department, for the facility primarily serving the developmentally disabled in the health planning area in which the facility is located.

(c) Community-based services, including services developed under s. 46.278, are inappropriate for the individuals served in the facility primarily serving the developmentally disabled.

(2) The department may require that a nursing home seeking approval or a facility primarily serving the developmentally disabled seeking renewal under sub. (1) agree to reduce the size of the facility primarily serving the developmentally disabled, under a plan submitted by the facility and approved by the department, during the approval or renewal period, in order to reflect reduced service need or increased availability of community-based services providing long-term care.

(3) Notwithstanding s. 150.31 (6), the department may waive any minimum size limits established under s. 150.31 (6) for a facility with an approved plan under sub. (2).

(4) Notwithstanding s. 150.29, if initial approval of a facility primarily serving the developmentally disabled is not renewed under sub. (1) or if approval or renewal is conditioned upon the requirement of sub. (2), reconversion to nursing home beds of beds which may not be operated as part of a facility primarily serving the developmentally disabled does not require approval under s. 150.29.

History: 1987 a. 27.

150.33 Applications for available beds. (1) At least once each year the department shall publish a class 2 notice under ch. 985 concerning the number of nursing home beds and beds in facilities primarily serving the developmentally disabled, if any, that are available under s. 150.31 or 150.40 in each of its health planning areas. The department shall promulgate rules defining the boundaries of these areas. The notice shall state the procedures by which any person may apply for approval for those beds.

(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).

(3m) 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 sub. (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 sub. (1). The department shall declare the application complete on the date on which the department receives all the required information.

(4) The department shall issue a class 2 notice under ch. 985 within 20 days after the date on which it declares all applications complete under sub. (3m), listing all applicants and describing their applications.

History: 1983 a. 27; 1987 a. 27 ss. 1868 to 1871, 1874; 1987 a. 399.

150.34 Other applications. (1) Any person intending to engage in activities subject to this subchapter not specified under s. 150.33 shall notify the department in writing of this

intent at least 30 days prior to submitting an application for review. An application expires unless the department declares the application complete under sub. (2) within 365 days after the date the department receives notice of the applicant's intent to engage in the activity. The department shall provide forms for submitting applications under this section.

(2) 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. The department shall declare the application complete on the date on which the department receives all the required information.

(3) The department shall issue a class 2 notice under ch. 985 on or before the 20th day of the month following the month in which it declares an application complete under sub. (2), listing the applicant and describing the applicant's proposed activity.

History: 1987 a. 27, 399; 1989 a. 56.

150.35 Review procedures. (2) The department shall hold a public meeting upon the request of an affected party to review applications under s. 150.33 or 150.34, at which all affected parties may present testimony. The department shall keep minutes or other record of testimony presented at the public meeting and shall, based on the testimony, consider the record in determining whether the applicant has met the review criteria under s. 150.39.

(3) Except as provided under sub. (3m), the department shall issue an initial finding to approve or reject the application within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3), unless all applicants consent to an extension of this period. The department may extend by 60 days the review cycle of all applications being concurrently reviewed if it finds that completing the reviews within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3) is not practicable due to the volume of applications received. The department shall base its initial finding on a comparative analysis of applications, relying on the criteria specified in s. 150.39. The applicant has the burden of proving, by a preponderance of the evidence, that each criterion 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 makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final action.

(3m) The department may receive any application which was developed under a plan of correction, as defined in s. 50.01 (4r), previously approved by the department and which does not add beds to the current licensed bed capacity, or any application involving a cost overrun submitted under s. 150.11 (3). Subsection (2) does not apply to these applications. Within 60 days after it receives a completed application, the department shall, according to procedures it promulgates by rule, review the application and issue its initial finding. No public meeting need be held on any project submitted under this subsection. Unless an adversely affected applicant makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final decision.

(4) (a) Any applicant whose project is rejected may request a public hearing to review the department's initial finding under sub. (3) or (3m), 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 promulgate 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; 1987 a. 27, 399; 1989 a. 173.

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 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. 140.82 (1) (b).

(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; 1987 a. 399.

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) or 46.278 (4) (b) 1, as a result of the relocation of former residents to community-based settings.

(b) Facilities primarily serving the developmentally disabled.

History: 1985 a. 29; 1987 a. 27.

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 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) or (3m).

(3) The record of the public meeting, if any, 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) or (3m).

History: 1983 a. 27; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 173.

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.

150.46 Exception. This subchapter applies to the Wisconsin veterans home at King only with respect to the statewide bed limit under s. 150.31 and with respect to the application, review and approval procedures relating to an increase in the nursing home bed capacity of the Wisconsin veterans home, under ss. 150.21 (2), 150.33, 150.35, 150.39, 150.40, 150.41 and 150.43.

History: 1991 a. 120.

SUBCHAPTER III

CAPITAL EXPENDITURE REVIEW PROGRAM

150.61 Applicability. Beginning July 1, 1993, no person may do any of the following without first obtaining the commission's approval:

(1) Except as provided in s. 150.613, obligate for a capital expenditure, by or on behalf of a hospital, that exceeds $1,000,000. 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 services new to the hospital that exceed $500,000 in a 12-month period, including an organ transplant program, burn center, neonatal intensive care program, cardiac program or air transport services, implement other services or programs specified by the commission by rule or, after June 30, 1996, 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. 180.1901 (2), that exceeds $500,000 for clinical medical equipment.

(4) Purchase or otherwise acquire a hospital.

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

History: 1991 a. 250.

150.613 Exemptions from capital expenditure review. (1) Section 150.61 does not apply if a person has, prior to July 1, 1993, entered into a legally enforceable contract, promise or agreement with another to do any of the activities specified in s. 150.61 (1) to (5).

(2) A person may obligate for a capital expenditure, by or on behalf of a hospital, without obtaining the approval of the commission 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: 1991 a. 250.

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 commission 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 commission receives an application for an exemption from a person intending to undertake a capital expenditure in excess of $500,000 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 commission 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 commission 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.

History: 1991 a. 250.

150.64 Public hearing requirement. (1) Any person intending to undertake a project or activity subject to this subchapter shall cause to be published a class 1 notice under ch. 985 in the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give notice in the area of the proposed project or activity. The notice shall describe the proposed project or activity and describe the time and place for the public hearing required under sub. (2).

(2) No sooner than 30 days after the date of publication of the notice under sub. (1), the person shall conduct a public hearing on the proposed project or activity. The hearing shall be on the expected impact of the proposed project or activity on health care costs, the expected improvement, if any, in the local health care delivery system, and any other issue related to the proposed project or activity. Management staff, if any, of the person seeking to undertake the project or activity and, if possible, at least 3 members of the governing board of a not-for-profit health care provider, if any, seeking to undertake the project or activity shall attend the public hearing to review public testimony. The person seeking to undertake the project or activity shall record accurate minutes of the meeting, shall include copies of the minutes and any written testimony presented at the hearing in an application concerning the project or activity that is submitted under s. 150.67 and shall submit the application within 10 days after the date of the public hearing.

History: 1991 a. 250.

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

History: 1991 a. 250.

150.67 Review requirements. (1) The commission'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 commission 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 commission may group applications for the same or similar types of facilities, services or applications that are proposed, for concurrent review. The commission 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 commission shall, by rule, establish its review requirements under this subsection.

History: 1991 a. 250.

150.69 Review criteria. The commission shall use the following criteria in reviewing each application under this subchapter, plus any additional criteria it develops by rule. The commission shall consider cost containment as its first priority in applying these criteria, and shall consider the recommendations and comments of affected parties. The commission may not approve any project under this subchapter unless the applicant demonstrates:

(1) The project is consistent with the state health services plan under s. 150.82.

(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. 52] and the charges to be paid by medical assistance

and by disability insurers. The commission shall determine the effect on these rates of the applicant's project for review under this subsection.

NOTE: The reference in sub. (5) to ch. 52 is bracketed because ch. 52 was not created.

(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 efficiency standards and criteria.

(11) 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 commission 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.

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

History: 1991 a. 250.

150.71 Review process. (1) The commission shall hold a public meeting upon the request of an affected party to review projects seeking approval, at which all affected parties may present testimony. The commission may consider projects seeking approval that are within a related area at joint public meetings. The commission shall keep minutes or other record of testimony presented at the public meeting.

(2) The commission 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 commission may not require substantial modification of any project as a condition of approval without the applicant's consent. The commission 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. The commission shall submit its decision to the applicant. Unless the applicant makes a timely request for a hearing under sub. (3), the commission's initial finding under this subsection is its final action.

(3) (a) Any applicant whose project is rejected may request a public hearing to review the commission's initial finding under sub. (2), if the request is submitted in writing within 10 days after the commission's decision, or may initiate a hearing under s. 227.42. The commission 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 commission shall promulgate 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 commission 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 commission'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: 1991 a. 250.

150.73 Judicial review. Any applicant adversely affected by a decision of the commission 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 commission's initial finding under s. 150.71 (2).

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

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

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

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

History: 1991 a. 250.

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

(2) The commission 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: 1991 a. 250.

150.76 Rate approval. Rate reimbursement to cover the cost of the project established for medical assistance under s. 49.45 (3) (e) 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 commission that the excess was due to conditions beyond its control.

History: 1991 a. 250.

150.77 Capital budget reporting. Each hospital shall annually, by January 1, beginning January 1, 1993, report to the commission a proposed capital budget for the 5-year period that begins with July 1, 1993. This budget shall specify all anticipated capital expenditures subject to this subchapter and anticipated application dates, if any. This requirement does not apply to purchase or other acquisitions of a hospital under s. 150.61 (4). No application from a hospital under s. 150.65 to approve a project is complete until the commission receives this information.

History: 1991 a. 250.

150.78 Rule making. The commission shall promulgate all of the following rules:

(1) Establishing review requirements under s. 150.67 (2).

(2) Establishing procedures and standards under s. 150.71 (3) (b).

(3) Establishing a method for defining an acute care service area under s. 150.82 (2).

History: 1991 a. 250.

150.80 Cost containment council. The cost containment council shall:

(1) Advise the commission on matters relating to implementing this chapter, to containing hospital costs and to maintaining the quality of health care.

(2) Review and comment on proposed commission rules prior to the date that the commission proposes its rules in final draft form. The council shall complete its review and submit its comments to the commission within time limits specified by the commission. The commission shall transmit the written majority and minority comments, if any, of the council to the presiding officer of each house of the legislature under s. 227.19 (2).

(3) Periodically issue reports concerning:

(a) The performance of the commission and its operations.

(b) The degree to which general relief under s. 49.02, medical assistance under ss. 49.43 to 49.499 and medicare under 42 USC 1395 to 1395ccc do not pay rates equal to the rates paid by nongovernment payers. Reports under this paragraph shall be issued annually and shall discuss these effects on both a statewide and individual hospital basis.

(c) The policy implications to hospitals and nongovernment payers of discounts granted to nongovernment payers. Reports under this paragraph shall be issued annually.

(4) Develop, review and recommend to the commission for adoption under s. 150.82 a state health services plan that includes a description of the hospital system in this state; identifies health care needs and surpluses with respect to existing health care services, facilities and equipment; and meets other requirements of the plan that are specified in s. 150.82.

(6) Prepare written minutes of each of its meetings.

History: 1991 a. 250.

150.81 Enforcement. (1) 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 subchapter that does not have the commission's approval.

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

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

(3) The commission'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 commission'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.

(4) The commission 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 subchapter.

History: 1991 a. 250.

150.82 State health services plan. (1) The commission shall adopt a state health services plan, based on recommendations of the cost containment council made under s. 150.80 (4) and using information provided by the office of health care information, at least once every 3 years that includes a description of the hospital system in the state and identifies health care needs and surpluses with respect to existing health care services, facilities and equipment and other components the commission finds useful.

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

History: 1991 a. 250.

SUBCHAPTER IV

HEALTH CARE COOPERATIVE AGREEMENTS

150.84 Definitions. In this subchapter:

(1) "Cooperative agreement" means an agreement between 2 health care providers or among more than 2 health care providers for the sharing, allocation or referral of patients; or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities or procedures or other services customarily offered by health care providers.

(2) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health center, tuberculosis sanatorium or other place licensed or approved by the department under s. 49.14, 49.16, 49.171, 50.02, 50.03, 50.35, 51.08, 51.09, 58.06, 149.01 or 149.02 or a facility under s. 45.365, 51.05, 51.06 or 149.06 or ch. 142.

(3) "Health care provider" means any person licensed, registered, permitted or certified by the department or by the department of regulation and licensing to provide health care services in this state.

(4) "Health maintenance organization" has the meaning given in s. 609.01 (2).

(5) "Preferred provider plan" has the meaning given in s. 609.01 (4).

History: 1991 a. 250.

150.85 Certificate of public advantage. (1) AUTHORITY. A health care provider may negotiate and voluntarily enter into a cooperative agreement with another health care provider in this state. The requirements of ch. 133 apply to the negotiations and cooperative agreement unless the parties to the agreement hold a certificate of public advantage for the agreement that is issued by the department and is in effect under this section.

(2) APPLICATION. Parties to a cooperative agreement may file an application with the department for a certificate of public advantage governing the cooperative agreement. The application shall include a signed, written copy of the cooperative agreement, and shall describe the nature and scope of the cooperation contemplated under the agreement and any consideration that passes to a party under the agreement.

(3) PROCEDURE FOR DEPARTMENT REVIEW. (a) The department shall review and approve or deny the application in accordance with the standards set forth in sub. (4) within 30 days after receiving the application. Unless the department issues a denial of the certificate of public advantage, the application is approved.

(b) If the department denies the application for a certificate of public advantage, the department shall issue the denial to

the applicants in writing, including a statement of the basis for the denial and notice of the opportunity for a hearing under s. 227.44. If the applicant desires to contest the denial of an application, it shall, within 10 days after receipt of the notice of denial, send a written request for hearing under s. 227.44 to the division of hearings and appeals in the department of administration and so notify the department of health and social services.

(4) STANDARDS FOR CERTIFICATION. (a) The department shall issue a certificate of public advantage for a cooperative agreement if it determines all of the following:

1. That the benefits likely to result from the agreement substantially outweigh any disadvantages attributable to a reduction in competition likely to result.

2. That any reduction in competition likely to result from the agreement is reasonably necessary to obtain the benefits likely to result.

(b) In order to determine that the criterion under par. (a) 1 is met, the department shall find that at least one of the following is likely to result from the cooperative agreement:

1. The quality of health care provided to residents of the state will be enhanced.

2. A hospital, if any, and health care facilities that customarily serve the communities in the area likely affected by the cooperative agreement will be preserved.

3. Services provided by the parties to the cooperative agreement will gain cost efficiency.

4. The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve.

5. Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided.

(c) In order to determine that the criterion under par. (a) 2 is met, the department shall consider all of the following:

1. The likely adverse impact, if any, on the ability of health maintenance organizations, preferred provider plans, persons performing utilization review or other health care payers to negotiate optimal payment and service arrangements with hospitals and other health care providers.

2. Whether any reduction in competition among physicians, allied health professionals or other health care providers is likely to result directly or indirectly from the cooperative agreement.

3. Whether any arrangements that are less restrictive as to competition could likely achieve substantially the same benefits or a more favorable balance of benefits over disadvantages than that likely to be achieved from reducing competition.

(5) CERTIFICATE REVOCATION. (a) If the department determines that the benefits resulting from or likely to result from a cooperative agreement under a certificate of public advantage no longer outweigh any disadvantages attributable to any actual or potential reduction in competition resulting from the agreement, the department may revoke the certificate of public advantage governing the agreement and, if revoked, shall so notify the holders of the certificate. A holder of a certificate of public advantage whose certificate is revoked by the department may contest the revocation by sending a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1), within 10 days after receipt of the notice of revocation.

(b) If a party to a cooperative agreement that is issued a certificate of public advantage terminates its participation in the agreement, the party shall file a notice of termination with the department within 30 days after the termination takes effect. If all parties to the cooperative agreement terminate their participation in the agreement, the department shall revoke the certificate of public advantage for the agreement.

(6) RECORD KEEPING. The department shall maintain a file of all cooperative agreements for which certificates of public advantage are issued and that remain in effect.

History: 1991 a. 250

150.86 Judicial review. A denial by the department under s. 150.85 (3) (b) of an application for a certificate of public advantage and a revocation by the department under s. 150.85 (5) (a) of a certificate of public advantage is subject to judicial review under ch. 227.

History: 1991 a. 250

SUBCHAPTER V

HOSPITAL RATE INCREASES

150.90 Definitions. In this subchapter:

(1) "Consumer price index" has the meaning given in s. 16.004 (8) (e) 1.

(2) Notwithstanding s. 150.01 (12), "hospital" has the meaning given in s. 50.33 (2), except that "hospital" does not include a center for the developmentally disabled as defined in s. 51.01 (3).

(3) "Rates" means individual charges of a hospital for the services that it provides.

History: 1991 a. 250

150.91 Public hearing. No hospital may increase its rates or charge any payer an amount exceeding its rates that are in effect on May 12, 1992, unless the hospital first does all of the following:

(1) Causes to be published a class 1 notice under ch. 985 in the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give notice in the area where the hospital is located. The notice shall describe the proposed rate change and the time and place for the public hearing required under sub. (2).

(2) No sooner than 30 days after the date of publication of the notice under sub. (1), conducts a public hearing on the proposed rate change. The hearing shall be on the expected impact of the proposed rate change on health care costs, the expected improvement, if any, in the local health care delivery system, and any other issue related to the proposed rate change. Management staff, if any, of the hospital proposing the rate change and, if possible, at least 3 members of the governing board of any not-for-profit hospital proposing the rate change shall attend the public hearing to review public testimony. The hospital shall record accurate minutes of the meeting and shall provide copies of the minutes and any written testimony presented at the hearing to the office of health care information within 10 days after the date of the public hearing.

History: 1991 a. 250

150.92 Exemption. This subchapter does not apply to a hospital that proposes to increase its rates during the course of the hospital's fiscal year by any amount or amounts that, in the aggregate, do not exceed the percentage amount that is the percentage difference between the consumer price index reported for the 12-month period ending on December 31 of the preceding year and the consumer price index reported for the 12-month period ending on December 31 of the year prior to the preceding year.

History: 1991 a. 250

SUBCHAPTER VI

MORATORIUM ON CONSTRUCTION OF HOSPITAL BEDS

150.93 Moratorium on construction of hospital beds. (1) The maximum number of beds of approved hospitals in this state that may be approved by the department for occupancy is 22,516.

(2) Except as provided in sub. (3), before July 1, 1996, no person may obligate for a capital expenditure or implement services, by or on behalf of a hospital, to increase the approved bed capacity of a hospital unless the person has, prior to May 12, 1992, entered into a legally enforceable contract, promise or agreement with another to so obligate or implement.

(3) A person may obligate for a capital expenditure, by or on behalf of a hospital, to renovate or replace on the same site existing approved beds of the hospital or to make new construction, if the renovation, replacement or new construction does not increase the approved bed capacity of the hospital, except that obligation for such a capital expenditure that exceeds $1,000,000 is subject to subch. III.

(4) No person may transfer approved beds of a hospital to a facility that is associated with the hospital.

History: 1991 a. 250

SUBCHAPTER VII

PSYCHIATRIC OR CHEMICAL DEPENDENCY BED LIMITATIONS

150.94 Definition. In this subchapter, notwithstanding s. 150.01 (12), "hospital" has the meaning given in s. 50.33 (2).

History: 1991 a. 250

150.95 Moratorium. Before July 1, 1996, no person may obligate for a capital expenditure by or on behalf of a hospital, to add to the number of the licensed psychiatric or chemical dependency beds of the hospital that the department determines exist on May 12, 1992, or to establish a new hospital with psychiatric or chemical dependency beds. Before July 1, 1996, no person may convert existing hospital beds approved for occupancy to licensed psychiatric or chemical dependency beds of the hospital.

History: 1991 a. 250