

**2001 DRAFTING REQUEST**

**Bill**

Received: **02/19/2001**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **DuWayne Johnsrud (608) 266-3534**

By/Representing: **Larry Konopacki**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - capital expenditure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Johnsrud@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Capital expenditure review and hospital rate setting commission

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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**B I L L**  
**REQUEST FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Rep. DuWayne Johnson

Date: 2/16/01 Person submitting request (name, phone number): Larry Konopacki - 6-3534

Persons to contact for questions about this draft (names, phone numbers): Larry Konopacki - 6-3534

**Describe the problem, including any helpful examples.**

**How do you want to solve the problem?**

*please see attached memo*

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not re-typed) copy.

You may attach a marked-up (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

**Requests are confidential unless stated otherwise.**

- May we tell others that we are working on this for you?  Yes  No
- If yes: Anyone who asks?  Yes  No Any legislator?  Yes  No Only the following persons: \_\_\_\_\_

Do you consider this request urgent?  Yes  No If yes, please indicate why: \_\_\_\_\_

Should we give this request priority over any other pending request of this legislator, agency or body?   If yes, sign your name here:

Yes No



# DuWayne Johnsrud

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State Representative

February 16, 2001

Bill drafting request for Rep. Johnsrud

**The Problem:** In 1987, the use of Capitol Expenditure Review and the Hospital Rate Setting Commission were terminated. These health services regulatory safeguards were vital to insuring accountability in the health care industry.

**The Solution:** Reinstate the of Capitol Expenditure Review and the Hospital Rate Setting Commission. Please see enclosed copies of 85-86 Chapter 54 and 150, Wis. Stats.

\*Capital Expenditure Review (ss. 150.61 - 150.81)  
- Repealed in '87

- Reinstated in '91 a 250

need DHS approval  
1987

need comm approval  
1991

spend more than  
20% of annual patient care.  
1,000,000 or 1,500,000

capital expenditure > \$1,000,000

- implement organ transplant program, burn center, neonatal center, cardiac program

- implement services new to hospital that exceed \$500,000 in 12-mo. period, including

- obligate more than \$1,000,000 for clinical medical equip

- obligate more than \$500,000 for clinical medical equip

- purchase or acquire hospital

- purchase or acquire hospital

- ↑ approved bed capacity

- const. or operate ambulatory surgery center or home health agency

- construct or operate " " "

- dep't cloth (st)

\* cost containment commission

- s. 15.195(10)

- attached to DHS

\* DHS

\* cost containment council

\* applicant holds hearing s. 150.64

\* comm holds hearing

\* health services part s. 150.82





OLD DRAFT

ISR:.....  
cmH's

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DAK &

WEDS.  
JAN. 2

1 NOTES

- 1 AN ACT <sup>gen cat</sup> relating to: establishing a hospital rate-setting commission and
- 2 hospital rate-setting council; setting hospital rates; creating a program to
- 3 review hospital capital expenditures and other activities of hospitals; making
- 4 appropriations; granting rule-making authority; and providing penalties.

*Analysis by the Legislative Reference Bureau*

**HOSPITAL RATE-SETTING**

(Commission)

This bill creates a hospital rate-setting commission attached to the department of administration (DOA).

The bill also creates a hospital rate-setting council in DOA. The council consists of 11 members each appointed for staggered <sup>four</sup> year terms. The bill specifies that the members shall include all of the following:

1. Three individuals nominated by the Wisconsin Health and Hospital Association.
2. One physician nominated by the State Medical Society of Wisconsin.
3. One individual nominated by the largest service insurance corporations.
4. One individual nominated by the Wisconsin division of the Health Insurance Association of America.
5. One individual who is a registered nurse and nominated by the Wisconsin Nurses Association.

**CAPITAL EXPENDITURE REVIEW PROGRAM**

DHFS

The bill requires a person to receive approval from the department of health and family service before doing any of the following:

eliminate this requirement and, instead,

Insert A

Insert B

1. Obligating by or on behalf of a hospital a capital expenditure in excess of \$1,000,000 or, if the purpose of the capital expenditure is to convert a hospital to a new use or to renovate all of part of a hospital, in excess of \$1,500,000.

2. Implementing an organ transplant program, burn center, neonatal intensive care program, cardiac program, or air transport services or adding psychiatric or chemical dependency beds.

3. Purchasing or otherwise acquiring a hospital.

4. Constructing or operating an ambulatory surgery center or a home health agency.

The bill creates an exemption from the approval requirements for the following activities:

1. Any project that has been agreed upon in a legally enforceable contract prior to the effective date of the bill.

2. Any obligation by or on behalf of a hospital for heating, air conditioning, electrical systems, telecommunications, computer systems, or nonsurgical outpatient services that is not a component of another project that requires DHFS approval if the obligation is not more than 20% of the hospital's gross annual patient revenue for its last fiscal year.

3. Any project that DHFS determines is for the research, development, and evaluation of innovative medical technology, the development of clinical applications of the technology, or the research, development, and evaluation of a major enhancement to existing medical technology. ↩

The bill requires a person who intends to undertake a project or activity that is subject to DHFS approval to publish a notice describing the project or activity and to conduct a public hearing on the proposed project or activity. The bill also requires DHFS to publish a notice or receipt of an application for review of the project or activity. DHFS must also conduct a public meeting upon the request of an affected party to review projects or activities for which an application for approval has been filed. If an applicant is adversely affected by a decision of DHFS, the applicant may petition for judicial review of the decision. An approval issued under the bill is valid for one year from the date of issuance. DHFS may grant one extension of up to six months for each approval. (ed)

Finally, the bill requires DHFS to adopt a state medical facilities plan at least once every three years. The plan must include a description of the state hospital system and identify any needed or surplus hospital beds.

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

1           SECTION 1. 15.105 (27) of the statutes is created to read:  
2           15.105 (27) HOSPITAL RATE-SETTING COMMISSION. There is created a hospital  
3           rate-setting commission, which is attached to the department of administration

1 under s. 15.03. No member of the commission may have a financial interest in a  
2 hospital, as defined in s. 50.33 (2). Any member of the commission who voluntarily  
3 assumes a financial interest in a hospital shall vacate the office. Any member of the  
4 commission who involuntarily assumes a financial interest in a hospital shall divest  
5 himself or herself of the office within a reasonable time or shall vacate the office.

6 **SECTION 2.** 15.107 (18) of the statutes is created to read:

7 15.107 (18) **HOSPITAL RATE-SETTING COUNCIL.** There is created in the department  
8 of administration a hospital rate-setting ~~commission~~<sup>council</sup>. The council shall consist of 11  
9 members appointed for staggered 4-year terms, who shall represent a balance of  
10 economic, provider, scientific, government, and consumer viewpoints. No more than  
11 3 members may be state employees. The council shall include all of the following:

12 (a) Three members nominated by the Wisconsin Hospital Association.

13 (b) One member who is a physician and nominated by the State Medical Society  
14 of Wisconsin.

15 (c) One member nominated by the largest service insurance corporations  
16 licensed under ch. 613. The size of a service insurance corporation shall be based on  
17 premium volume as reported in the most recent Wisconsin insurance commissioner's  
18 report on business.

19 (d) One member nominated by the Wisconsin division of the Health Insurance  
20 Association of America.

21 (e) One member who is a registered nurse and nominated by the Wisconsin  
22 Nurses Association.

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

1 2001-02 2002-03

2 20.438 Hospital rate-setting commission

3 (1) HOSPITAL RATE SETTING

4 (a) General program operations GPR A -0- -0-

5 (g) Assessments PR A -0- -0-

6 SECTION 4 20.438 of the statutes is created to read:

7 20.438 Hospital rate-setting commission. There is appropriated to the  
8 hospital rate-setting commission for the following programs:

9 (1) HOSPITAL RATE SETTING. (a) General program operations. The amounts in  
10 the schedule for hospital rate-setting activities under subch. III of ch. 150.

11 (g) Assessments. The amounts in the schedule for hospital rate-setting  
12 activities under subch. III of ch. 150. All moneys received under s. 150.67 and 2001  
13 Wisconsin Act .... (this act), section 4, shall be credited to this appropriation.

14 SECTION 5. 49.45 (3) (e) 11. of the statutes is created to read:

15 49.45 (3) (e) 11. Notwithstanding subs. 1. to 10., the department may  
16 authorize the hospital rate-setting commission to determine the rate of  
17 reimbursement for services provided under the medical assistance program in the  
18 manner specified under subch. III of ch. 150.

19 SECTION 6. 50.36 (1) of the statutes is amended to read:

20 50.36 (1) The department shall promulgate, adopt, amend, and enforce such  
21 rules and standards for hospitals for the construction, maintenance, and operation  
22 of the hospitals deemed necessary to provide safe and adequate care and treatment  
23 of the patients in the hospitals and to protect the health and safety of the patients  
24 and employees; and nothing contained herein shall pertain to a person licensed to

create auto-ref "a"

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INSERT 4-18

1 practice medicine and surgery or dentistry. The building codes and construction  
2 standards of the department of commerce shall apply to all hospitals and the  
3 department may adopt additional construction codes and standards for hospitals,  
4 provided they are not lower than the requirements of the department of commerce.  
5 Except for the construction codes and standards of the department of commerce and  
6 except as provided in s. 50.39 (3) and 150.61 to 150.68, the department shall be  
7 the sole agency to adopt and enforce rules and standards pertaining to hospitals.

History: 1971 c. 241; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9.

8 **SECTION 7.** 146.37 (1g) of the statutes is amended to read:

9 146.37 (1g) Except as provided in s. 153.85, no person acting in good faith who  
10 participates in the review or evaluation of the services of health care providers or  
11 facilities or the charges for such services conducted in connection with any program  
12 organized and operated to help improve the quality of health care, to avoid improper  
13 utilization of the services of health care providers or facilities or to determine the  
14 reasonable charges for such services, or who participates in the obtaining of health  
15 care information under ch. 153 or in hospital rate-setting activities under subch. III  
16 of ch. 150, is liable for any civil damages as a result of any act or omission by such  
17 person in the course of such review or evaluation. Acts and omissions to which this  
18 subsection applies include, but are not limited to, acts or omissions by peer review  
19 committees or hospital governing bodies in censuring, reprimanding, limiting or  
20 revoking hospital staff privileges or notifying the medical examining board or  
21 podiatrists affiliated credentialing board under s. 50.36 or taking any other  
22 disciplinary action against a health care provider or facility and acts or omissions by



1 a medical director, as defined in s. 146.50 (1) (j), in reviewing the performance of  
2 emergency medical technicians or ambulance service providers.

~~History: 1975 s. 187; 1979 s. 221; 1981 c. 323; 1983 a. 27; 1985 a. 29 s. 3202 (27); 1985 a. 340; 1987 a. 27, 399; 1989 a. 102; 1997 a. 175; 1999 a. 56.~~

3 **SECTION 8.** Subchapter III <sup>91</sup>(~~title~~) of chapter 150 [precedes 150.61] of the  
4 statutes is created to read:

5 CHAPTER 150 <sup>(B)</sup>

6 SUBCHAPTER III <sup>□</sup>

7 HOSPITAL RATE SETTING AND CAPITAL EXPENDITURE REVIEW

8 **150.61 Definitions.** In this subchapter:

9 **150.71 Approval required.** (1) Beginning on the effective date of this <sup>sub</sup>section

10 .... [revisor inserts date], no person may do any of the following unless the person  
11 applies for and receives the department's approval as specified under this  
12 subchapter:

13 (a) Except as provided in s. 150.713 and subject to sub. (2), by or on behalf of  
14 a hospital, obligate for a capital expenditure more than \$1,000,000, unless the  
15 capital expenditure is to convert a hospital to a new use or to renovate part or all of  
16 a hospital.

17 (b) Except as provided in s. 150.713 and subject to sub. (2), by or on behalf of  
18 a hospital, obligate for a capital expenditure more than \$1,500,000 to convert a  
19 hospital to a new use or to renovate part or all of a hospital.

20 (c) Implement an organ transplant program, <sup>a</sup>burn center, <sup>a</sup>neonatal intensive  
21 care program, <sup>a</sup>cardiac program, or air transport services or add psychiatric or  
22 chemical dependency beds.

23 (d) Purchase or otherwise acquire a hospital.

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

Insert  
ISR-1

sub. (1)

1           (2) The cost of studies, surveys, plans, and other activities essential to a  
2 proposed capital expenditure specified under ~~sub. (1)~~ (a) or (b) shall be included in  
3 determining the value of the capital expenditure. A capital expenditure includes any  
4 donation of equipment or facilities that, if acquired directly, would be subject to  
5 review under this subchapter and any transfer of equipment or facilities for less than  
6 fair market value that, if transferred at fair market value, would be subject to review  
7 under this subchapter.

8           **150.713 Exceptions.** (1) A person who has, prior to the effective date of this  
9 subsection ... [revisor inserts date], entered into a legally enforceable contract,  
10 promise, or agreement to do any of the activities specified in s. 150.71 (1), is not  
11 required to apply for or receive the department's approval under this subchapter to  
12 do any of the activities agreed to in the contract, promise, or agreement.

13           (2) A person may obligate for a capital expenditure, by or on behalf of a hospital,  
14 without first obtaining the department's approval under this subchapter, not more  
15 than 20% of the hospital's gross annual patient revenue for its last fiscal year if the  
16 expenditure is for heating, air conditioning, ventilation, electrical systems, energy  
17 conservation, telecommunications, computer systems, or nonsurgical outpatient  
18 services and is not a component of another project specified in s. 150.71 (1).

19           (3) A person who receives an exemption from the department under s. 150.715  
20 is not required to apply for or receive the department's approval to obligate a capital  
21 expenditure on behalf of a hospital or to make a substantial change in a health  
22 service as specified in the exemption.

23           **150.715 Innovative medical technology exemption.** (1) In this section:

24           (a) "Clinical trial" means clinical research conducted under approved protocols  
25 in compliance with federal requirements that are applicable to investigations

1 involving human subjects, including the requirements for an informed consent  
2 advising the patient clearly of the risks associated with participating in the clinical  
3 research.

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

7 (2) The department may grant any person who intends to undertake a capital  
8 expenditure of more than \$500,000, or who intends to make a substantial change in  
9 a health service, an exemption from the requirements of s. 150.71 if the person meets  
10 all of the following requirements:

11 (a) The capital expenditure or substantial change in a health service is for the  
12 research, development, and evaluation of innovative medical technology, the  
13 development of clinical applications of the technology, or the research, development,  
14 and evaluation of a major enhancement to existing medical technology.

15 (b) The person submits an application for an exemption to the department.

16 (c) The person demonstrates that, prior to applying for an exemption,  
17 preliminary animal studies or preliminary clinical investigations establish that the  
18 innovative medical technology or major enhancement to existing medical technology  
19 has a reasonable probability of advancing clinical diagnosis or therapy.

20 (d) In developing and evaluating the clinical applications of the technology or  
21 research, the person uses scientifically sound studies to determine clinical efficacy,  
22 safety, cost-effectiveness, and appropriate utilization levels in a clinical setting.

23 (e) The person conducts the clinical trials, evaluation, or research according to  
24 scientifically sound protocols that are subject to peer review and approval and meets

1 the requirements that are applicable to investigations and clinical evaluation  
2 involving human subjects.

3 (f) The innovative medical technology will be used to conduct necessary  
4 research, development, and evaluation.

5 (g) The person does not include any recovery of capital expenses that are  
6 incurred as part of the capital expenditure or substantial change in a health service  
7 exempted under this section in the expense and revenue budget for purposes of rate  
8 setting under ss. 150.61 to 150.68 until after the person receives the approval of the  
9 federal food and drug administration and the department for general medical use of  
10 the innovative medical technology or major enhancement to existing medical  
11 technology. The person may recover operating expenses only after the federal food  
12 and drug administration approves the expenses for safety and efficacy and a third  
13 party agrees to pay for the expenses.

14 (3) No more than 2 exemptions may be granted under this section for each type  
15 of innovative medical technology and major enhancement to existing medical  
16 technology.

17 **150.717 Notification requirement.** A person who intends to undertake an  
18 activity specified in s. 150.71 (1) shall notify the department in writing at least 30  
19 days prior to submitting an application for review. An application expires one year  
20 from the date the applicant notifies the department under this section unless the  
21 department declares the application complete as provided under s. 150.719 (1).

22 **150.719 Review requirements.** (1) The department's review of an application  
23 begins on the date that a completed application is received. On or before the 20th  
24 day of the month <sup>that</sup> immediately following <sup>the</sup> receipt of a completed application, the  
25 department shall send a notice of receipt of the completed application to the

1 applicant and shall publish a class 2 notice under ch. 985 in a daily newspaper with  
2 general circulation in the area where the proposed activity will be located. No  
3 application for review that is received from a hospital is complete until the  
4 commission receives a proposed capital budget under s. 150.73.

5 (2) The department may group applications for the same or similar types of  
6 facilities or services or for activities that are proposed within the same health  
7 planning area, as defined by the department under s. 150.33 (1), for concurrent  
8 review. The department shall base its review under this subsection on a comparative  
9 analysis of the applications, using the criteria specified in s. 150.72 and a ranking  
10 of priorities determined by the department. In reviewing an application, the  
11 department shall first consider cost containment in applying the criteria under s.  
12 150.72 (1) and shall also consider the comments of any affected parties. The  
13 department shall promulgate rules specifying the requirements for review under  
14 this subsection.

15 **150.72 Review criteria.** (1) No application for an activity specified in s.  
16 150.71 (1) (a) to (e) may be approved by the department unless the applicant proves  
17 by a preponderance of the evidence that each of the following criteria has been met  
18 or does not apply to the activity:

19 (a) The activity is consistent with the state medical facilities plan adopted  
20 under s. 150.733.

21 (b) A need for the activity, as determined by current and projected utilization,  
22 exists.

23 (c) The activity will efficiently and economically use resources, including  
24 financing for capital investment and operating expenses, when measured against  
25 alternative use of resources.

1 (d) The applicant has sufficient cash reserves and cash flow to pay operating  
2 and capital costs.

3 (e) Increases in operating and capital costs that will result from the activity are  
4 reasonable, including the direct charge to the consumer, the applicant's projected  
5 request for rate increases under ss. 150.61 to 150.67, and the charges to be paid by  
6 medical assistance and disability insurers. In considering whether the increases are  
7 reasonable, the department shall consider the analysis provided by the commission  
8 under sub. (2).

9 (f) Financing for the activity is available at market rates.

10 (g) Health care personnel needed to provide the proposed services are available  
11 and will be effectively used.

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

13 (i) Any proposed expansion and construction or renovation alternatives are  
14 cost-effective.

15 (j) The activity is consistent with efficiency standards and criteria.

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

22 (L) The applicant has prepared a plan to provide health care to low-income  
23 individuals, and the department has approved the plan.

1           (2) The commission shall determine the effect of any rate change the applicant  
2 has requested on the applicant's activity and provide a report to the department no  
3 later than 45 days after the department receives a completed application.

4           **150.723 Review process.** (1) Upon the request of an affected party, the  
5 department shall hold a public meeting to review activities for which an application  
6 for review has been received. All affected parties may present testimony at the public  
7 meeting. The department shall keep minutes or other record of testimony presented  
8 at the public meeting.

9           (2) (a) The department shall issue an initial finding to approve or reject the  
10 application no later than 75 days after the date on which the notice under s. 150.719  
11 (1) is published unless the applicant consents to an extension of this period. The  
12 department may not require substantial modifications of any project as a condition  
13 of approval without the applicant's consent. The department shall submit the initial  
14 finding to the applicant. Unless the applicant makes a timely request for a hearing  
15 under sub. (3), an initial finding issued under this subsection shall be considered a  
16 final action.

17           (b) Notwithstanding par. (a), the department may extend the review period of  
18 all projects being reviewed concurrently for 60 days if the department finds that  
19 completing the review within the 75-day time period under par. (a) is not practical  
20 due to the number of applications under review.

21           (3) (a) If an applicant's application is rejected, the applicant may request a  
22 public hearing to review the department's initial finding if the applicant submits a  
23 request for the hearing in writing no later than 10 days after the department issues  
24 the initial finding or the applicant may initiate a hearing under s. 227.42. The  
25 department shall commence the hearing no later than 30 days after the date on

1 which a timely request for the hearing is received unless all parties consent to an  
2 extension of the period.

3 (b) Except as provided in s. 227.42, ss. 227.43<sup>✓</sup> to 227.50<sup>✓</sup> do not apply to hearings  
4 under this subsection. The department shall promulgate rules specifying all of the  
5 following:

6 1. Procedures for scheduling hearings under this subsection.

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

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

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

14 5. Procedures for reconsideration and rehearing.

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

16 (d) Each applicant has the burden of proving, by clear and convincing evidence,  
17 that the department's initial finding<sup>✓</sup> was arbitrary and capricious, contrary to law,  
18 or contrary to the weight of the evidence on the record when considered as a whole.

19 **150.725 Judicial review.** An applicant adversely affected by a decision of the  
20 department under s. 150.723<sup>✓</sup> (3) may petition for judicial review of the decision under  
21 s. 227.52<sup>✓</sup>. The scope of judicial review shall be as provided in s. 227.57<sup>✓</sup>, and the record  
22 before the reviewing court shall consist of all of the following:

23 (1) The application and all supporting material received prior to the  
24 department's initial finding issued under s. 150.723<sup>✓</sup> (2)

25 (2) The record of the public meeting held under s. 150.723<sup>✓</sup> (1).



1           (3) The department's analysis of the activity and the activity's compliance with  
2 the criteria specified in s. 150.72<sup>✓</sup> (1).

3           (4) The record of the hearing held under s. 150.723<sup>✓</sup> (3).

4           (5) The department's decisions and analysis issued under s. 150.723<sup>✓</sup> (2) or (3).

5           **150.727 Validity and contents of an approval.** (1) An approval is valid for  
6 one year from the date of issuance. The department may grant one extension of up  
7 to 6 months for each approval.

8           (2) Each approval shall specify the maximum capital expenditure that may be  
9 obligated for an activity.

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

15          **150.73 Capital budget reporting.** Beginning January 1, 2003, each hospital  
16 shall annually, by January 1, submit to the department a proposed capital budget for  
17 the 5-year period that begins on July 1 of the year in which the proposed budget is  
18 submitted. The budget shall specify all anticipated capital expenditures for  
19 activities specified in s. 150.71 (1) (a) to (c) and (e) and all anticipated application  
20 dates.

21          **150.733 State medical facilities plan.** (1) The department shall adopt a  
22 state medical facilities plan at least once every 3 years that includes a description  
23 of the state hospital system and identifies any needed or surplus hospital beds. Each  
24 plan, except the initial plan adopted under this subsection, shall also include a

Section 4. RP 153.75 (1) (g) - 15 -

1 description of needed and surplus health services and any other comments the  
2 department determines are useful.

3 (2) The department may not approve an application for any activity that  
4 requires the addition of hospital beds that would exceed the number of beds  
5 authorized by the state medical facilities plan for the acute care service area where  
6 the project would be located. The department shall promulgate rules to define an  
7 acute care service.

8 SECTION 9. 153.08 of the statutes is repealed.

9 SECTION 10. 165.40 of the statutes is repealed.

10 SECTION 11. 230.08 (2) (mp) of the statutes is created to read:

11 230.08 (2) (mp) One staff director of the hospital rate-setting commission,  
12 created under s. 15.105 (27).

13 SECTION 12. 632.75 (5) of the statutes is amended to read:

14 632.75 (5) PAYMENTS FOR HOSPITAL SERVICES. No insurer may reimburse a  
15 hospital for patient health care costs at a rate exceeding the rate established under  
16 ch. 54, 1985 stats., or s. 146.60, 1983 stats., for care provided prior to July 1, 1987  
17 ss. 150.61 to 150.67.

History: 1975 c. 375; 1979 c. 221; 1981 c. 304; 1983 a. 27; 1985 a. 29 s. 3202 (27); 1987 a. 27; 1989 a. 21, 359.

18 SECTION 13. Nonstatutory provisions.

19 (1) INITIAL APPOINTMENT OF MEMBERS OF THE HOSPITAL RATE-SETTING COMMISSION.  
20 Notwithstanding the length of terms specified for the members of the hospital  
21 rate-setting commission under section 15.105 (27) of the statutes, as created by this  
22 act, the initial members shall be appointed for the following terms:

23 (a) One member for a term expiring on March 1, 2005.

24 (b) One member for a term expiring on March 1, 2007.

1 (c) One member for a term expiring on March 1, 2009.

2 (2) INITIAL APPOINTMENT OF MEMBERS OF THE HOSPITAL RATE-SETTING COUNCIL.

3 Notwithstanding the length of terms specified for the members of the hospital  
4 rate-setting council under section 15.107 (18) of the statutes, as created by this act,  
5 the initial members shall be appointed for the following terms:

6 (a) The members specified under section 15.107 (18) (a) of the statutes, as  
7 created by this act, for terms expiring on July 1, 2003.

8 (b) The members specified under section 15.107 (18) (b) and (d) of the statutes,  
9 as created by this act, and the members not specified in section 15.107 (18) (a) to (e)  
10 of the statutes, as created by this act, for terms expiring on July 1, 2005.

11 (c) The members specified under section 15.107 (c) and (e) of the statutes, as  
12 created by this act, for terms expiring on July 1, 2007.

Insert  
16-12 →

13 **SECTION 14. Effective date.**

14 (1) This act takes effect on January 1, ~~2002~~, or on the day after publication,  
15 whichever is later.

2003

16 (END)

Inset A

# 1997 SENATE BILL 17

January 15, 1997 - Introduced by Senators DECKER, MOEN, WINEKE and RISSER, cosponsored by Representatives BOCK, SPRINGER, NOTESTEIN, BOYLE, R. POTTER and WOOD. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

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

~~Analysis by the Legislative Reference Bureau~~

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

1. Necessary operating expenses.
2. Interest expenses on debt incurred for capital or operating costs.

no #

commission

commission



SENATE BILL 17

- 3. Costs of medical education.
- 4. Costs of services, facilities, and supplies that organizations related to the hospital by common ownership or control supply.
- 5. Unrecovered costs from private parties who fail to pay the full charge for services provided.

6. Fees assessed by the ~~PSC~~ *Commission* or other regulatory agency.

7. Capital requirements. *Commission's*

The bill sets forth standards for the ~~PSC~~ *Commission* decision making including:

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

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

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

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

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

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

- 1. A capital expenditure in excess of \$1,000,000 made by or on behalf of a hospital.
- 2. The implementation of new services to a hospital that exceed \$500,000 in a 12-month period.
- 3. An expenditure in excess of \$500,000 made by or on behalf of a hospital, independent practitioner, limited liability company, partnership, unincorporated medical group or service corporation for clinical medical equipment.

(end of insert)

*Speaker*

*Commission*

*Commission five*

*Commission*

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2561/Plins  
ISR:.....

Insert B

*the department  
of health and  
family  
services*

Under current law, no person may lease or acquire an ownership or controlling interest in a hospital or system of hospitals that is owned by a nonprofit corporation, a city, a county, the state, or the University of Wisconsin Hospitals and Clinics Authority without first receiving approval of the ~~Attorney General~~, office of the commissioner of insurance, and ~~DHFS~~, if the lease or acquisition results in one person owning or controlling more than 49% of the hospital or hospital system or results in at least a 20% change in ownership or control of the hospital or hospital system.

Section #. 50.35 of the statutes is amended to read:

**50.35 Application and approval.** Application for approval to maintain a hospital shall be made to the department on forms provided by the department. On receipt of an application, the department shall, except as provided in s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet the requirements established by the department. Except as provided in s. 50.498, this approval shall be in effect until, for just cause and in the manner herein prescribed, it is suspended or revoked. The certificate of approval may be issued only for the premises and persons or governmental unit named in the application and is not transferable or assignable. ~~The department shall withhold, suspend or revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but, except as provided in s. 50.498, otherwise, may not withhold, suspend or revoke approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards adopted by the department after giving a reasonable notice, a fair hearing and a reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply under this section.~~

*Except* as provided in s. 50.498, *the department* may not withhold, suspend or revoke approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards adopted by the department after giving a reasonable notice, a fair hearing and a reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply under this section.

History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.35; 1989 a. 37; 1997 a. 93, 237.

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*(2) No hospital may charge rates that exceed the rates established by the commission under this subchapter.*

1 (1) "Capital expenditure limit" means the maximum amount of capital  
2 expenditures that may be approved under s. 196.9904

3 ~~With~~ "Capital project" means a proposed capital expenditure that exceeds  
4 \$1,000,000 or, if the purpose of converting to a new use or renovating part or all of  
5 a hospital, a proposed capital expenditure that exceeds \$1,500,000.

6 "Commission" means the ~~public service~~ *hospital rate-setting* commission.

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

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

10 (C) "Rates" means individual charges of a hospital for the services that it  
11 provides or, if authorized under s. ~~196.9904~~ *150.01(3)*, the aggregate charges based on case  
12 mix measurements.

13 ~~196.9904~~ *150.612* **Prospective rate setting.** Beginning on July 1, ~~1999~~ *2003*, the  
14 commission shall ~~establish~~ *prescribe* and may regularly ~~revise~~ *revise* maximum ~~hospital~~ *hospital* rates on a  
15 prospective basis. *The commission may revise these rates as provided in this subchapter.* The commission shall publish biennial reports ~~showing~~ *showing*  
16 that contain the ~~proceedings~~ *and any* information necessary to describe the rate of hospital cost  
17 increases and the financial condition of hospitals.

18 ~~196.9904~~ *150.615* **Rule making.** The commission shall promulgate ~~all of the following~~ *rules to*  
19 ~~that~~ *no* ~~implement~~ *implement* this subchapter. ~~At least 2 commissioners must sign~~  
20 any rules that are promulgated to interpret s. 196.9904.

21 (2) Rules that establish the rate for assessments that are authorized under s.

22 ~~196.9906~~ *150.67* **Requests for rate change.** (1) The commission shall create a  
23 ~~schedule~~ *2002* allowing each hospital to request rate changes annually on or after the date  
24 ~~the hospital receives its audited financial statements.~~ *Beginning on July 1, 2002,* the commission may schedule  
25 *for the most recent fiscal year* the commission may schedule

*for the most recent fiscal year*  
*a hospital to request a rate change*



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for requesting review

new 91 (b)

scheduled by the commission

(a) No later than

(a)

(2) ~~When~~ 10 days after ~~it~~ <sup>a hospital</sup> submits a rate request under sub. (1) the hospital shall publish a class 1 notice under ch. 985. If the ~~hospital~~ <sup>commission</sup> fails to submit a rate

request by the date scheduled ~~for~~ <sup>no later than</sup> a review under sub. (1), the commission shall

publish a class 1 notice under ch. 985 ~~within~~ <sup>no later than</sup> 10 days after the date scheduled for the review. ~~That~~ <sup>new 91 (b) A</sup> notice ~~whether published by the hospital or the commission~~ shall

under par. (a)

inform the public of the review, ~~summarize~~ <sup>contain a summary of the</sup> the rate ~~change request~~ <sup>change request</sup> if any, and state the process by which interested persons may become ~~parties~~ <sup>a party</sup> to the review. ~~A person may~~ <sup>new 91 (c)</sup>

a description of

become a party to the review only by notifying the commission in writing ~~within~~ <sup>no later than</sup> 30

than

days after the date the notice is published.

(3) ~~Each~~ <sup>At the time a hospital requests a rate change, the</sup> hospital shall submit ~~its~~ <sup>to the commission</sup> proposed financial requirements ~~to the~~ <sup>and</sup> commission ~~at the same time that it submits a rate request.~~ <sup>to the commission</sup>

to the specified under §. 150.625

Except as provided in ~~150.64~~ <sup>150.64</sup> ~~or~~ <sup>any</sup> s. ~~196.999~~ (4) (g), each hospital shall provide the commission with ~~the~~ <sup>any</sup> information

that the commission determines is necessary to perform its responsibilities with respect to ~~setting~~ <sup>set and monitor</sup> rates and monitoring established rates.

~~patient care and other organizations and hospital corporate affiliates that generate financial requirements of the hospital under review shall also~~ <sup>of the hospital and other organizations</sup> ~~provide~~ <sup>provide</sup> to the commission financial or other

statistical information related to the financial requirements that the commission determines is necessary to perform its responsibilities with respect to ~~setting~~ <sup>and monitor</sup> rates

and monitoring established rates.

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

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

3 ~~150.625~~ <sup>150.625</sup> ~~Financial requirements.~~ (1) <sup>The</sup> Financial requirements ~~shall~~  
4 ~~that~~ <sup>under s. 150.62(3)</sup> ~~submit a request~~ shall include: <sup>all of the following</sup>

5 (a) Necessary operating expenses, including wages, employee <sup>e</sup> fringe benefits,  
6 purchased services, professional fees, repairs and maintenance, dietary and medical  
7 supplies, pharmaceuticals, utilities, insurance, standby costs, and applicable taxes.

8 <sup>A hospital may include as necessary operating expenses</sup>  
9 <sup>Any amount representing the value of services performed by</sup> members of a religious  
10 <sup>order or other organized religious group</sup> ~~may only be included~~ if <sup>actually paid to</sup>  
11 <sup>the</sup> members ~~of the religious group~~ <sup>and</sup> ~~equivalent~~ <sup>are</sup> equivalent to the amounts paid to  
12 <sup>hospital</sup> employees for similar work. The commission may not use previously accumulated  
13 depreciation of capitalized assets to offset operating expenses.

14 (b) Interest expenses on debt incurred for capital or operating costs. Interest  
15 payments on debts incurred for capital costs shall be offset by income earned on  
16 investments unless the income is assigned by the donor. <sup>After the sale of a hospital</sup>  
17 <sup>financial requirements shall include</sup> ~~calculating~~ the interest expense on debt incurred for capital costs <sup>to be included as</sup>  
18 ~~financial requirements after the sale and revaluation of a hospital~~ <sup>only if</sup> the debt <sup>does</sup> ~~may not~~  
19 exceed the revalued price of the hospital, as <sup>specified</sup> ~~provided~~ in sub. (4).

20 (c) Direct and indirect costs of medical education, allied education, and research  
21 <sup>that are</sup> programs <sup>approved by the commission,</sup> ~~to the extent that the costs are~~ <sup>as</sup> reasonable  
22 and necessary to maintain the quality of the ~~programs~~ <sup>costs under this</sup>  
23 ~~paragraph shall be reduced by~~ <sup>less any</sup> tuition, scholarships, endowments, gifts, grants, and  
24 similar sources of revenue <sup>that are received by the hospital</sup>

(d) Costs of services, facilities, and supplies that organizations related to the  
hospital by common ownership or control furnish to the hospital. These costs shall

## SENATE BILL 17

## SECTION 13

1 be calculated as the charge of the furnishing organization, but may not exceed a  
2 reasonable amount in relation to the price of comparable services, facilities, or  
3 supplies that could be purchased elsewhere.

4 (e) Unrecovered costs from private parties who fail to pay the full charge for  
5 care provided, unless the hospital fails to maintain sound credit and collection  
6 policies to minimize the ~~the~~ costs.

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

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

13 (i) 1. <sup>and</sup> ~~Working capital requirements shall be calculated~~ based on the net change in  
14 the estimated year-end balance of the hospital's year under review, compared to the  
15 year-end balance of the hospital's prior fiscal year, for the following accounts:

- 16 1. Cash.
- 17 2. Accounts receivable.
- 18 3. Inventories.
- 19 4. Prepaid expenses.
- 20 5. Trade accounts payable.
- 21 6. Accrued interest payable.

22 (h) An amount necessary to establish and maintain a contingency fund in cash  
23 and investments equal to 2% of the budgeted gross revenue for the hospital's year  
24 under review. The hospital shall use cash and investments to establish and maintain  
25 its contingency fund and shall use the fund to ~~meet~~ <sup>pay any</sup> unexpected expenses. The

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1 commission may review any expenditure of contingency funds in a prior year that  
2 requires restoration in the hospital's year under review for reasonableness,  
3 consistent with the nature of the unexpected expense.

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

8 1. "Available funds" includes cash and investments that are not assigned by the  
9 donor and are available to meet capital needs ~~and~~ <sup>and</sup> ~~available funds~~ does not include  
10 operating fund working capital requirements, prospective accumulations that are  
11 authorized by the commission, donor-restricted or creditor-restricted funds, grants,  
12 commitments for capital requirements, debt retirement expenses, or the amounts  
13 disallowed under s. ~~150.63(2)~~ <sup>150.63(2)</sup> (b). The commission may authorize prospective  
14 accumulations if a ~~capital~~ <sup>that must be approved under s. 150.71</sup> project has lending requirements that necessitate such an  
15 accumulation or ~~can lower its~~ <sup>if the</sup> interest costs <sup>for the project may be lowered</sup> by borrowing, or if financial needs of a  
16 hospital occur because of balloon payments. The commission may also authorize  
17 prospective accumulations to finance a ~~capital~~ <sup>that must be approved under s. 150.71(1)</sup> project if the cost of the ~~capital~~ <sup>capital</sup> project  
18 equals or exceeds 25% of the hospital's gross patient revenue for the current fiscal  
19 year, the hospital has submitted a 3-year capital expenditure plan to the commission,  
20 and the department indicates that the ~~capital~~ project is consistent with the projected  
21 needs of the community.

22 2. "Capital purchases" includes minor remodeling and the purchase of  
23 equipment, land, land improvements, and leasehold improvements.

24 3. "Depreciation" means the rational allocation of the historical cost of  
25 capitalized assets throughout their ~~useful~~ <sup>useful</sup> ~~lives~~ <sup>lives</sup> of those assets

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

3 (j) The amount by which estimated <sup>relief payments and medical assistance</sup> payments by government payers <sup>payments under</sup> ~~under s. 196.999 (1) (a)~~ <sup>ch. 49 and</sup> exceed actual payments. <sup>medical</sup>

4 ~~196.999 (1) (a)~~ exceed actual payments.  
5 (k) <sup>Any</sup> Financial incentives <sup>that are authorized by</sup> The commission shall, by rule, allow financial <sup>42 USC 1395</sup> ~~incentives as additional financial requirements~~ <sup>to 1395ccc</sup> for efficiently operated hospitals. <sup>as determined</sup>

6  
7 (2) Hospitals may collect revenue from sources other than patients, including  
8 gifts and grants, investment income, or income from activities <sup>that are</sup> incidental to patient  
9 care. Revenues from endowment funds or donor-restricted gifts to provide services  
10 for designated patients shall offset the cost of those services. No revenue from  
11 general endowment funds or unrestricted gifts may be used to offset operating  
12 expenses except that revenue from these funds or gifts may be used to offset interest  
13 expenses. Revenues received to finance special projects or wages paid to special  
14 project employees shall offset the cost of patient services. Revenues from meals sold  
15 to visitors or employees, from <sup>drugs</sup> <sup>Pharmaceuticals</sup> sold to persons who are not patients, from the  
16 operation of gift shops or parking lots, or from the provision of televisions, radios, or  
17 telephones to patients shall offset the cost of these services, <sup>to the extent</sup> ~~subject to the limitation~~  
18 that the amount of revenue offset from any of these services may not exceed the cost  
19 of the service.

20 (3) Purchase discounts, the amount by which actual payments by government  
21 payers exceed estimated payments under s. <sup>150.64</sup> ~~196.999~~ (1) (a), and allowances and  
22 refunds of expenses shall be subtracted from the calculation of financial  
23 requirements under <sup>this section</sup> ~~sub. (1)~~. Revenues from invested funds shall also be subtracted  
24 from the calculation of financial requirements but may not offset an amount that  
25 exceeds the hospital's interest expenses. <sup>Any costs of a project that must be approved</sup> <sup>under s. 150.71(1) and that does not receive the approval</sup> <sup>may not</sup>

be included in the calculation of a hospital's financial requirements.

SENATE BILL 17

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

6 ~~196.996 Standards for decision making~~ <sup>150.63 Initial determinations</sup> The commission and ~~the~~ <sup>commission</sup> staff shall  
 7 review and evaluate each hospital's proposed financial requirements and rate <sup>(Change)</sup>  
 8 request <sup>In reviewing and evaluating the financial requirements and rate-</sup> in light of a variety of standards for decision making, including: <sup>change request</sup>  
 9 (a) <sup>The commission shall</sup> The need to reduce the rate of hospital cost increases while preserving the <sup>consider</sup>

10 quality of health care in all parts of the state and taking into account the financial <sup>all</sup>  
 11 viability of economically and efficiently operated hospitals. <sup>of</sup>

12 <sup>(b)</sup> Comparisons with prudently administered hospitals of similar size or <sup>the</sup>  
 13 providing similar services that offer quality health care with sufficient staff. In <sup>following</sup>  
 14 classifying hospitals according to size and services, the commission shall consider  
 15 volume, intensity, and educational programs and special services provided by  
 16 hospitals.

17 <sup>(c)</sup> A variety of cost-related trend factors based on nationally or regionally  
 18 recognized economic models.

19 <sup>(d)</sup> ~~The~~ <sup>The</sup> special circumstances of rural hospitals and teaching hospitals.

20 <sup>(e)</sup> ~~The~~ <sup>The</sup> past budget and rate experiences of the hospital that submits the rate  
 21 request.

22 <sup>(f)</sup> Findings of the utilization review program under s. ~~196.999~~ <sup>150.66</sup> (3) concerning  
 23 the hospital that submits the rate request. <sup>(2)</sup>

24 ~~196.997 Initial determinations~~ After reviewing a hospital's proposed  
 25 financial requirements, the commission may disallow any of the following:

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1 (a) Costs associated with medical services that a utilization review program  
2 under s. ~~196.9993~~ <sup>150.68</sup> determines are medically unnecessary or inappropriate.

3 (b) ~~Forty percent~~ of the amount by which patient revenue generated by the  
4 hospital during its previous fiscal year exceeds 104% of the hospital's budgeted  
5 patient revenue for that year, if the hospital's annual gross patient revenue <sup>is less</sup>  
6 than \$5,000,000, ~~adjusted as provided in s. 196.9993~~ <sup>as adjusted under s. 150.68</sup> or exceeds 102% of the

7 hospital's budgeted patient revenue for that year, if the hospital's annual gross  
8 patient revenue equals or exceeds \$5,000,000, ~~adjusted as provided in s. 196.9993~~ <sup>as adjusted under s. 150.68</sup>.

9 The commission shall, <sup>by rule</sup> ~~by rule~~ establish a procedure under which hospitals whose  
10 variable costs exceed 65% are subject to a lesser disallowance under <sup>subd. 1.</sup> ~~this paragraph.~~

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

13 (d) The amount by which incremental expenses that are associated with the  
14 cost of a ~~capital~~ <sup>that must be approved under s. 150.71(1)</sup> project exceed 105% of the expenses projected in the hospital's  
15 application for approval of the ~~capital~~ project. This paragraph does not apply if any  
16 of the following applies:

- 17 1. The hospital demonstrates to the satisfaction of the commission that the  
18 excess was due to conditions beyond its control.
- 19 2. The excess occurs more than 3 years after completion of the ~~capital~~ project.

20 (e) Costs that the commission determines ~~under s. 196.9993~~ are unreasonable.

21 (f) ~~Wages~~ <sup>wages</sup> that the record demonstrates to be excessive. <sup>determining</sup> In <sup>making</sup> <sup>whether</sup> <sup>wages</sup> <sup>are</sup> <sup>excessive</sup>  
22 ~~determinations~~ under this paragraph, the commission shall consider the wage levels  
23 ~~offered by~~ <sup>of</sup> hospitals located in a relevant geographic area surrounding the hospital  
24 that submitted the rate request as well as <sup>wage levels of</sup> ~~in~~ hospitals of similar size or <sup>that</sup> ~~providing~~  
25 similar services. In addition, the commission shall consider the hospital's ability to <sup>that are</sup>

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1 attract adequate staff and the wage trends in nonregulated, related sectors of the  
2 ~~Wisconsin~~ <sup>state,</sup> economy.

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

4 ~~(a)~~ (a) After reviewing the hospital's financial requirements and rate request,  
5 the commission staff shall suggest <sup>to the commission</sup> any disallowances authorized under sub. ~~(3)~~ <sup>2</sup> and

6 shall submit ~~rate~~ <sup>a</sup> recommendations <sup>to the hospital and commission.</sup> If ~~it~~ <sup>it</sup> considers  
7 ~~the hospital proposal unacceptable,~~ <sup>the rate recommended by the commission staff differs from</sup> the commission staff shall ~~explain~~ <sup>explain to the hospital</sup>

8 ~~what facts and standards cause it to disagree and shall submit alternate~~ <sup>rate request submitted by the</sup> ~~provide an explanation for the difference~~ and shall submit alternate  
9 recommendations. ~~All hospital that fails to accept any part of the commission staff's~~

10 ~~recommendations shall request a settlement conference under s. 196.997.~~

11 (b) 1. Except as provided in subd. 2., the commission staff shall submit its  
12 recommendations under par. (a) ~~within~~ <sup>no later than</sup> 60 days after the date that review  
13 commences under s. ~~196.997~~ <sup>150.62</sup> (1), even if the commission staff determines that the  
14 data provided by the hospital for a scheduled review are incomplete. The commission  
15 staff may, however, recommend a disallowance or an alternate rate, including no rate  
16 increase, on the grounds of insufficient data.

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

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

22 ~~Review of determinations.~~ <sup>150.635</sup> (1) ~~A~~ <sup>rate recommendations</sup> hospital that disputes any part  
23 of ~~the~~ <sup>a</sup> recommendations of the commission staff under s. ~~196.997~~ <sup>150.63</sup> shall, ~~within~~ <sup>no later than</sup> 10  
24 days after the recommendations are submitted under s. ~~196.997~~ <sup>150.63(3)</sup> request a  
25 settlement conference ~~between its representative and~~ <sup>with</sup> the commission staff for the



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purpose of resolving ~~their~~ <sup>the</sup> differences <sup>in the hospital's rate request and</sup> or defining more precisely the nature of their <sup>the commission staff's recommendation</sup>

~~Chairperson~~ The chairperson of the commission, or a commissioner designated by the chairperson, shall preside over ~~each~~ <sup>the</sup> settlement conference. ~~Within~~ <sup>No later than</sup> 20 days after the hospital requests a settlement conference, the settlement conference shall be completed. <sup>No later than 10 days after completion of the</sup>

(2) ~~A~~ hospital that is dissatisfied with the results of ~~a~~ settlement conference under sub. (1), ~~is entitled to~~ <sup>the hospital may request</sup> a hearing before the commission under sub. (3) ~~if it~~

~~submits a timely request.~~ Each request for a hearing shall be submitted to the <sup>Upon receipt of a request, the commission shall grant a hearing to the hospital</sup> commission within 10 days after the completion of the settlement conference. The

hospital may present testimony based on any standard for decision making ~~as~~ <sup>specified</sup> in

s. ~~150.63(1)~~ <sup>150.63(1)</sup> All questions of fact shall be determined without ascribing greater weight to evidence presented by commission staff than to evidence presented by any other party solely due to its presentation by the staff.

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

(b) A hospital that requests an informal hearing shall present the reasons supporting its proposed rate increase and financial requirements. Commission staff shall respond by explaining ~~its~~ <sup>the</sup> disagreement and ~~its~~ <sup>alternate</sup> recommendations.

Within the time limits ~~specified~~ <sup>established under</sup> par. (a), the hospital, parties to the review, and commission staff may ~~may~~ cross-examine witnesses and rebut arguments presented. The hospital, parties to the review, and the commission staff may ~~also~~ <sup>employ</sup>

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1

~~Outside~~ experts to present their position. The presiding commissioners may impose an overall time limit on the length of the hearing.

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

5

(4) (3) The commission shall keep a complete <sup>written</sup> record of all hearings and investigations conducted under sub. (3) ~~using a stenographic, electronic or other~~

6

7

~~method to record all testimony presented.~~ The commission shall provide a transcribed, certified copy of all or any part of ~~this~~ <sup>the</sup> record <sup>at</sup> on the request of any party <sup>person who is a</sup> to a hearing or investigation. ~~It~~ <sup>the</sup> may charge <sup>the</sup> requester <sup>to cover</sup> for the costs <sup>of providing</sup> involved. <sup>copies of</sup>

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(5) (6) (a) Any person may request a hearing under s. 227.44, regardless of whether any other hearing is authorized by law or is authorized at the discretion of the commission or whether any other proceeding is authorized by rule of the commission,

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~~subject to the limitation~~ <sup>except</sup> that no person may receive more than one contested case hearing concerning a particular act or failure to act by the commission.

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

17

18

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

19

~~100,000~~ <sup>150.64 (3)</sup> Commission orders. (1) (a) The commission shall determine allowable financial requirements ~~under s. 196.996~~ and disallowances under s. ~~196.997~~

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From the difference between these amounts, the commission shall subtract the hospital's estimated relief payments and medical assistance payments under ch.

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49 and medicare payments under 42 USC 1395 to 1395ccc, unless the commission determines that the hospital's estimates are incorrect, in which case the commission

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shall subtract its own estimates of the hospital's relief, medical assistance, and

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(1) and  
(2) for  
the hospital

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1 medicare payments. The commission shall, by order, establish maximum rates that  
 2 allow the hospital to generate revenue sufficient to provide this remainder. The  
 3 commission shall, by rule, establish acceptable methods <sup>for hospitals to use in</sup> of estimating payments by  
 4 relief, medical assistance, and medicare under this paragraph. Each hospital shall  
 5 choose one of the ~~the~~ methods and use it consistently unless the commission authorizes  
 6 the hospital to change ~~the~~ <sup>the</sup> method.

7 (b) Unless the hospital requests a hearing under s. ~~196.998(2)~~, the commission  
 8 shall issue ~~an~~ <sup>an</sup> order under par. (a) ~~within~~ <sup>no later than</sup> 15 days after the commission staff submits  
 9 its recommendations, or, if the hospital requests a settlement conference under s. <sup>under s. 150.63(3)(b)</sup>  
 10 ~~196.998(1)~~ <sup>within</sup> 15 days after the commission determines that the hospital will  
 11 not seek a hearing following the conclusion of the settlement conference. If the  
 12 hospital disputes only part of the recommendations of the commission staff, the  
 13 commission may establish maximum rates under par. (a) concerning the  
 14 recommendations <sup>with which</sup> ~~with which~~ the hospital agrees <sup>with</sup> prior to the conclusion of the  
 15 hearing under s. ~~196.998(3)~~ <sup>150.635(3)</sup>.

16 (c) If ~~the hospital disputes the recommendations of the commission staff and~~ <sup>the commission conducts</sup>  
 17 a hearing ~~as provided~~ under s. ~~196.998(3)~~ <sup>150.635</sup> (3) (c), the commission shall establish by order  
 18 maximum rates for the hospital's year under review at the conclusion of the hearing.  
 19 If the commission conducts an informal hearing under s. ~~196.998(3)~~ <sup>150.635</sup> (3) (a) and (b), <sup>the commission</sup>  
 20 shall issue its order <sup>no later than</sup> within 50 days after the date on which the hospital requested  
 21 the hearing.

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

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(e) ~~A~~ hospital may apply an increase in its rates selectively, if the aggregate increase in its rates does not exceed the amount authorized by the commission. Prior to ~~submitting~~ <sup>increasing</sup> ~~the rate increase~~, the hospital shall explain to the commission <sup>for changing a method of applying a rate increase</sup> ~~its~~ method of applying the rate increase <sup>and after</sup> ~~and allow the commission~~ 5 working days, as defined in s. 227.01 (14), <sup>the commission does not notify the hospital that it has not</sup> ~~to determine if the aggregate increase in rates exceeds the~~ <sup>approved</sup> authorized amount. ~~Failure to disapprove~~ the hospital's ~~method of applying~~ <sup>the hospital may increase its rates as proposed and</sup> ~~rate~~ increase <sup>within this period constitutes an approval</sup>. If the commission approves the hospital's method of applying the rate increase, the commission may not challenge the method prior to the date of a succeeding review under s. <sup>150.62</sup> ~~196.99A~~ (1) except as provided in sub. (4) (a). If the commission <sup>does not approve</sup> ~~disapproves~~ the hospital's method of applying the rate increase, <sup>the commission</sup> ~~it~~ shall recommend an alternate method. If the hospital <sup>does not</sup> ~~fails to~~ modify its method of applying the rate increase, the commission may challenge the method in circuit court. In addition to any other remedy the court may impose under s. <sup>150</sup> ~~196.99A~~, if the court finds that the hospital's method generates an aggregate increase in the hospital's rates that is inconsistent with the amount authorized by the commission, the hospital <sup>is subject to a forfeiture</sup> ~~shall forfeit~~ an amount equal to 50% of the amount overcharged and shall comply with the alternate method recommended by the commission or with any other method ordered by the court that the court finds more consistent with the commission's order. No hospital may change a method of

applying its rate increase that has received the commission's approval without submitting the changes to the commission for its approval under this <sup>paragraph</sup> ~~subsection~~.

(f) ~~A~~ hospital <sup>that</sup> ~~receiving~~ a rate increase that may <sup>be approved by</sup> ~~only~~ commence between the 2nd and 7th months of its fiscal year may make an adjustment to the rate increase, <sup>for</sup> ~~that applies to~~ that fiscal year only, in order to generate an amount of revenue equal

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

3 <sup>150.65</sup> Except as provided in s. ~~196.999~~ <sup>150.65</sup> if a party seeks judicial review of  
4 a commission order, the affected hospital may continue to bill payers at the rates  
5 established by the commission. No hospital that bills payers under this paragraph  
6 adversely affects its right to contest the rates established by the commission.

7 ~~Notwithstanding sub. (1) and ss. 196.999, 196.999, and 196.999,~~ <sup>150.62</sup> <sup>150.63</sup> <sup>150.635</sup>  
8 at the request of a hospital the commission may waive the procedures for review of <sup>that</sup>  
9 a rate request and issue an interim order <sup>if the commission determines that an emergency exists</sup>

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

13 (3) The commission may promulgate rules <sup>to</sup> establish ~~the~~ a system that defines  
14 rates as aggregate charges based on case mix measurements if the commission  
15 submits its proposed system to the joint committee on finance <sup>for review and if</sup> under s. 13.10, receives  
16 <sup>the</sup> ~~that~~ committee <sup>approval</sup> and holds a public hearing prior to promulgating its rules.

17 ~~Such a system may not take effect prior to July 1, 1998,~~ <sup>The system</sup> shall be consistent with the  
18 ~~standards~~ <sup>standards specified</sup> under s. ~~196.996~~ <sup>150.63</sup> (1), shall take into account the reasonable financial  
19 requirements of hospitals and shall ensure quality of care and a reasonable cost to

20 ~~patients.~~  
21 (4) The commission may not: <sup>do any of the following</sup>

22 (a) Reduce rates ~~that it has~~ established, prior to the date the commission  
23 schedules a ~~succeeding~~ <sup>150.62</sup> review under s. ~~196.999~~ (1), unless the hospital misstated  
24 ~~any~~ material fact at a prior rate-setting proceeding. Projections on the volume of  
25 hospital services utilized do not constitute material facts under this paragraph.

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

5 1. The hospital implements an unauthorized increase in its approved rates,  
6 unless the increase is trivial.

7 2. The hospital uses ~~the funds~~ <sup>moneys</sup> that it has prospectively accumulated for an  
8 authorized capital project for purposes other than the authorized project.

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

11 (c) Interfere directly in the personal or decision-making relationships between  
12 a patient and the patient's physician, except as provided in ~~s. 196.998 and~~  
13 ~~s. 196.999.~~ <sup>s. 150.66 ✓</sup>

14 This paragraph does not limit the commission's ability to make  
15 determinations under sub. (1) (a) or s. 196.997.

16 (d) Control directly the volume or intensity of hospital utilization, except as  
17 provided in ~~ss. 196.998 and 196.999.~~ <sup>s. 150.66 ✓</sup> This paragraph does not limit the  
18 commission's ability to make determinations under sub. (1) (a) or s. 196.997.

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

23 (f) Restrict directly the freedom of ~~hospitals~~ <sup>a</sup> to exercise management decisions  
24 in complying with the rates established by the commission, unless ~~a~~ <sup>the</sup> hospital agrees  
to a condition attached to the establishment of ~~part of~~ <sup>the</sup> rates.

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

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~~190.9901~~ **Injunctions of commission orders.** No injunction may be issued to suspend or stay enforcement of an order of the commission unless all of the following occur:

(1) All parties to the ~~proceeding~~ *review under s. 150.62 (1)(b)* from which the commission's order was issued are notified of the petition seeking an injunction, are given an opportunity to appear at a hearing prior to the issuance of the injunction, and are made parties to the proceeding in circuit court.

(2) ~~The party seeking the injunction~~ *is not the* enters into an undertaking by at least 2 sureties at a level that the circuit court finds sufficient to guarantee the payment of all damages *that* the hospital may sustain by delaying the effect of the commission's order.

~~This subsection does not apply to a hospital that was a party to the proceeding from which the commission's order was issued.~~ *the party*

~~190.9992~~ <sup>150.655</sup> **Expedited review, expedited cases and exempt hospitals. (1)**

~~Notwithstanding s. 150.635,~~ The commission may promulgate rules under which hospitals meeting specific criteria receive expedited review of rate requests under this subchapter.

(2) (a) ~~A hospital whose gross annual patient revenue~~ *Notwithstanding s. 150.625* ~~is less than \$10,000,000,~~ *that has* ~~adjusted as provided in s. 106.9997~~ *150.61* for the hospital's last fiscal year is eligible to receive automatic approval of its rate request if ~~it meets~~ *are met* all of the following criteria:

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

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

(b) ~~Any hospital that receives~~ *is eligible for* automatic approval of its rate *increase* request under this subsection shall publish ~~in~~ a class 1 notice under ch. 985, in one or more newspapers

*prior to implementing the increase,*

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

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

6 ~~(b)~~ <sup>33</sup> ~~The~~ commission may grant hospitals whose gross annual patient revenue  
7 is less than \$10,000,000, adjusted as provided in s. <sup>150.62 (1)</sup> ~~196.994~~, a rate increase that  
8 takes effect over a 2-year period with an automatic escalation clause taking effect  
9 at the end of the first year. A hospital that receives a 2-year rate increase is not  
10 required to request a rate increase at the end of the first year.

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

13 <sup>150.66 B</sup> ~~196.994~~ **Utilization review program.** (1) The commission shall approve  
14 <sup>and evaluate</sup> ~~an~~ all-patient utilization review program for each hospital <sup>S</sup> ~~that shall conform to~~  
15 ~~requirements of federal regulations on utilization review programs.~~ The commission  
16 ~~may evaluate these programs as part of its monitoring functions under s. 196.994 (b).~~

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

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



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

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

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

8 ~~196.9994~~ <sup>150.665</sup> Enforcement. (1) ~~stet~~ <sup>and senators</sup> Until the commission establishes different  
9 rates under this subchapter, ~~no hospital~~ <sup>in effect</sup> may charge any payer an amount exceeding  
10 the rates established as of the effective date of this ~~paragraph~~ <sup>section</sup> ... [revisor inserts  
11 date]. ~~No hospital may charge any payer an amount exceeding the rates established~~

12 under this subchapter ~~stet~~  
13 The attorney general may seek a judicial remedy to enforce compliance with  
14 ~~stet~~ <sup>and S. 150.612(2)</sup> if the attorney general first notifies the hospital and provides the hospital a  
15 reasonable time to correct ~~a~~ <sup>the</sup> violation. The commission may ~~seek a judicial remedy~~ <sup>petition a court</sup>  
16 to enforce compliance with any statutory requirement or with any rule or order of the  
17 commission if it first notifies the hospital and provides the hospital a reasonable time  
18 to correct ~~a~~ <sup>the</sup> violation. The commission shall commence any action under this  
19 paragraph in the circuit court for the county in which the hospital is located. <sup>(2)</sup>

20 (c) ~~A court~~ <sup>hospital</sup> that finds an intentional ~~failure~~ <sup>by</sup> to comply with the rates under  
21 this subsection may ~~impose~~ <sup>be subject to</sup> a forfeiture of up to \$5,000. Each week that a hospital  
22 ~~commits~~ <sup>by violates S. 150.6(2)</sup> intentional failure to comply with the rates constitutes a separate  
23 violation. <sup>(2)</sup>

24 (9) ~~Neither~~ <sup>NO</sup> a hospital nor a physician may be paid for a service that a  
25 utilization review program under ~~any law~~ <sup>this section</sup> determines is medically unnecessary

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

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

8 ~~(A) Any person who intentionally violates an order of a hearing examiner~~  
9 ~~issued under s. 227.46 (7) to protect trade secrets in a contested case brought under~~  
10 ~~this subchapter shall be subject to a forfeiture of \$5,000.~~

11 ~~(196.9994) Annual adjustments.~~ <sup>150.67</sup> The limits on gross annual patient revenue  
12 in ss. ~~196.9994~~ <sup>150.63</sup> (b) and ~~196.9994~~ <sup>150.65</sup> (2) (a) ~~intro~~ and ~~(A)~~ <sup>3</sup> shall be adjusted annually  
13 to reflect annual changes in the average of the consumer price index and the hospital  
14 market basket index.

15 ~~196.9996~~ <sup>150.68</sup> Assessments. (1) In this section:

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

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

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

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

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~~insurance and other self-payers or nonpublic payers, that are generated by a hospital from inpatient and outpatient services.~~

~~(e) "Net income" means total revenue and nonoperating gains in excess of expenses and nonoperating losses.~~

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

~~(g) "Nonoperating gains" means gifts, donations, endowments, return on investments and any other gains that are not related to patient care.~~

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

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

~~(j) "Other revenue" means revenue from services, other than health care services, provided to patients and revenue from sales to and services provided to nonpatients.~~

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

~~(Beginning July 1, 1998, the commission shall, within 90 days after the beginning of each fiscal year, estimate the total amount of revenue required for administration by the commission of this subchapter during that fiscal year and~~

~~assess that estimated total amount to hospitals, under the rates established by rule under s. 198.993 (2) and in proportion to each hospital's respective ~~net income~~ gross private-pay patient revenues during~~

~~the hospital's most recently concluded ~~entire~~ fiscal year. The commission may not assess under this subsection a hospital that has a net income of 3% or less over the~~

~~net income for the hospital's next most recently concluded entire fiscal year. Each~~

not The commission shall promulgate rules to establish the rate of the assessments under this section

SENATE BILL 17

*of the year in which*

1 hospital that is assessed shall pay the assessment by ~~the~~ December 1 following the  
2 assessment. The ~~commission~~ <sup>is made</sup> shall credit all payments of assessments ~~to~~ <sup>shall be</sup> the <sup>credited</sup>  
3 appropriation account under s. 20. ~~438 (g)~~ <sup>438 (g)</sup>. ← 20.438 (1)(g) <sup>to</sup>

**196.9998 Capital expenditure review program. (1) APPLICABILITY.**

Beginning on July 1, 1998, no person may do any of the following without first obtaining the commission's approval:

(a) Except as provided in sub. (2), 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 section 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 section is a capital expenditure.

(b) 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 add psychiatric or chemical dependency beds.

(c) Obligate for an expenditure by or on behalf of a hospital, independent practitioner, limited liability company, partnership, unincorporated medical group or service corporation, as defined in s. 180.1901 (2), that exceeds \$500,000 for clinical medical equipment.

(d) Purchase or otherwise acquire a hospital.

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

Insert 16-12

SENATE BILL 17

(e) 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 subsection or may impose restrictions as part of its approval to ensure compliance with this section.

(16) STATE HEALTH SERVICES PLAN. (a) The commission shall adopt a state health services plan using information provided by the office of health care information in the office of the commissioner of insurance, 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.

(b) The commission may not accept any application for a project under this section 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.

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

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

CS

SECTION 15. Nonstatutory provisions.

Request to supplement appropriation

PUBLIC SERVICE COMMISSION, HOSPITAL RATE SETTING

By <sup>April 2002</sup> ~~October 1, 1997~~, the public service commission shall submit

section 16.515 of the statutes, a request to supplement the appropriation under section ~~20.438(C)~~ <sup>20.438(C)(g)</sup> of the statutes, as created by this act, ~~under~~ a proposed

to the secretary of administration

as specified under section 16.515 of the statutes. The request shall include

22  
23  
24  
25

SENATE BILL 17

create auto-ref "ab"

hospital rate-setting

III

1 budget for activities of the public service commission under subchapter II of chapter 150 of the statutes, as created by this act.

2 ~~1997~~ <sup>150</sup> 4. The ~~public service~~ <sup>hospital rate-setting</sup> commission shall submit proposed rules required  
3  
4 under section ~~196.996~~ <sup>150.615</sup> of the statutes, as created by this act, to the legislative council  
5 staff for review under section 227.15 (1) of the statutes no later than ~~January 1, 1998~~ <sup>May 1, 2002</sup>.

6 These rules may not take effect before July 1, ~~1998~~ <sup>2002</sup>.

7 <sup>(b)</sup> Using the procedure under section 227.24 of the statutes, the ~~public service~~ <sup>hospital rate-setting</sup>  
8 commission shall promulgate rules required under section ~~196.996~~ <sup>150.68</sup> of the  
9 statutes, as created by this act, for the period prior to the effective date of the rules  
10 submitted under ~~subdivision 1~~ <sup>paragraph (a)</sup> but not to exceed the period authorized under  
11 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a)  
12 and (2) (b) of the statutes, the ~~public service~~ <sup>hospital rate-setting</sup> commission need not provide evidence  
13 of the necessity of preservation of the public peace, health, safety, or welfare in  
14 promulgating the rules under this ~~paragraph~~ <sup>subsection</sup>.

15 ~~By January 1, 1998, the public service commission shall do all of the following:~~

16 ~~(5) Assessments. (a)~~  
17 ~~1. Estimate the total amount of revenue required for fiscal year ~~1997-98~~ <sup>2001-02</sup> for~~  
18 ~~administration by the commission of subchapter II of chapter ~~196~~ <sup>150</sup> of the statutes, as~~  
19 ~~created by this act.~~

20 ~~2. Assess the estimated total amount under subdivision 1. to hospitals, as~~  
21 ~~defined in section 150. ~~11~~ <sup>61</sup> ( ~~2~~ <sup>3</sup> ) of the statutes, under the rates established by rule~~  
22 ~~under ~~paragraph~~ <sup>subsection (4)</sup> (b) ~~and~~ <sup>gross-private-pay patient revenue</sup> in proportion to each hospital's respective ~~net income~~ <sup>revenue</sup>, as~~  
23 ~~defined in section 196.996 (1) (e) of the statutes, as created by this act, during the~~  
24 ~~hospital's most recently concluded entire fiscal year, except that the public service~~

(end of insert)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2561/P1dn

ISE:.....

rs

*Bate*

& DAK

Representative Johnsrud:

The drafting instructions I received were rather vague and I had to make several assumptions regarding how the 1987 statutory provisions should fit into current law. Thus, I have prepared this bill in preliminary form for your careful review. Specifically, \* please note the following:

1. Previously, the hospital rate-setting commission employed one staff director in the unclassified service. Do you want to include a staff director as well?

2. I am not sure how much you want to appropriate for the hospital rate-setting commission or for the capital expenditure review program so I have put zeros in the schedule entry. You may wish to discuss the appropriations with the Legislative Fiscal Bureau.

3. The members of the ~~Hospital Rate-Setting Council~~ serve for staggered ~~4~~ <sup>four</sup> year terms. Is this your intent? Also, the 1987 statutes specified that three members of the ~~Council~~ be appointed by the Wisconsin Hospital Association. I believe the Wisconsin Hospital Association changed its name to the Wisconsin Health and Hospital Association so, under this draft, three members of the Wisconsin Health and Hospital Association must be appointed to the ~~Commission~~ <sup>stet</sup>. Is this okay?

4. Please review the financial requirements that must be submitted by a hospital under proposed section 150.625.

5. The 1985-86 statutes that you included as part of the drafting instructions require DHFS to administer the capital expenditure review program. As you know the program was repealed in 1987. In 1991, the capital expenditure review program was briefly revived, but instead of DHFS, a cost containment commission administered the program. I assumed that you wanted DHFS to administer the program. Several other modifications were made to the program in 1991 as well. You may wish to review subch. III of ch. 150 of the 1993-94 statutes to determine whether you want any of the provisions of the 1993-94 statutes to be incorporated into the bill. I would be happy to provide you with a copy of the 1993-94 provisions if you wish.

6. The bill does not include the moratorium on relocating hospitals or establishing new hospitals that was contained in s. 150.62 of the 1985 statutes. Is this your intent?

7. I do not understand the innovative medical technology exception under proposed s. 150.715. The provision permits a person to make a capital expenditure of more than \$500,000 if the person receives an innovative medical technology exception. The \$500,000 limit appears to be meaningless if, under proposed s. 150.71, a person is only required to seek DHFS's approval for capital expenditures over \$1,000,000. Perhaps the \$500,000 limit should be a \$1,000,000 <sup>limit</sup>?

Please feel free to contact me with any questions or concerns you may have.

Ivy G. Sager-Rosenthal  
Legislative Attorney  
Phone: (608) 261-4455  
E-mail: ivy.sager-rosenthal@legis.state.wi.us

DAK

8. Is the effective date what you want? Is the date specified in s. 150.612 (1) what you want?



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2561/P1dn  
ISR&DAK:rs&cmh:kjf

January 2, 2002

Representative Johnsrud:

The drafting instructions I received were rather vague and I had to make several assumptions regarding how the 1987 statutory provisions should fit into current law. Thus, I have prepared this bill in preliminary form for your careful review. Specifically, please note the following:

1. Previously, the hospital rate-setting commission employed one staff director in the unclassified service. Do you want to include a staff director as well?
2. I am not sure how much you want to appropriate for the hospital rate-setting commission or for the capital expenditure review program so I have put zeros in the schedule entry. You may wish to discuss the appropriations with the Legislative Fiscal Bureau.
3. The members of the hospital rate-setting council serve for staggered four-year terms. Is this your intent? Also, the 1987 statutes specified that three members of the council be appointed by the Wisconsin Hospital Association. I believe the Wisconsin Hospital Association changed its name to the Wisconsin Health and Hospital Association so, under this draft, three members of the Wisconsin Health and Hospital Association must be appointed to the council. Is this okay?
4. Please review the financial requirements that must be submitted by a hospital under proposed section 150.625.
5. The 1985-86 statutes that you included as part of the drafting instructions require DHFS to administer the capital expenditure review program. As you know the program was repealed in 1987. In 1991, the capital expenditure review program was briefly revived, but instead of DHFS, a cost containment commission administered the program. I assumed that you wanted DHFS to administer the program. Several other modifications were made to the program in 1991 as well. You may wish to review subch. III of ch. 150 of the 1993-94 statutes to determine whether you want any of the provisions of the 1993-94 statutes to be incorporated into the bill. I would be happy to provide you with a copy of the 1993-94 provisions if you wish.
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7. I do not understand the innovative medical technology exception under proposed s. 150.715. The provision permits a person to make a capital expenditure of more than \$500,000 if the person receives an innovative medical technology exception. The \$500,000 limit appears to be meaningless if, under proposed s. 150.71, a person is required to seek DHFS's approval only for capital expenditures over \$1,000,000. Perhaps the \$500,000 limit should be a \$1,000,000 limit?

8. Is the effective date what you want? Is the date specified in s. 150.612 (1) what you want?

Please feel free to contact me with any questions or concerns you may have.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

**Beam, Laura**

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**From:** Johnsrud, DuWayne  
**Sent:** Friday, February 15, 2002 3:35 PM  
**To:** LRB.Legal  
**Subject:** Request

Could I please get an ELECTRONIC copy of LRB 2561/P1 as soon as possible? Thank you.

Representative DuWayne Johnsrud  
(608) 266-3534 or toll free 888-534-0096  
PO Box 8952, Madison, WI 53708

*See [www.repjohnsrud.com](http://www.repjohnsrud.com) for news and information about the 96th Assembly District and Natural Resources Committee*

**Beam, Laura**

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**From:** Johnsrud, DuWayne  
**Sent:** Monday, February 25, 2002 1:38 PM  
**To:** LRB.Legal  
**Subject:** LRB 2561

Please jacket LRB 2561 for the Assembly, and send us an electronic copy (non-preliminary) of the legislation. Thank you.

Representative DuWayne Johnsrud  
(608) 266-3534 or toll free 888-534-0096  
PO Box 8952, Madison, WI 53708

*See [www.repjohnsrud.com](http://www.repjohnsrud.com) for news and information about the 96th Assembly District and Natural Resources Committee*