

 **09hr\_JCR-AR\_CRule\_10-005\_pt01**



(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules ...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



**State of Wisconsin • DEPARTMENT OF REVENUE**

2135 RIMROCK ROAD • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX (608) 266-5718 • <http://www.revenue.wi.gov>

*Jim Doyle*  
Governor

*Roger M. Ervin*  
Secretary of Revenue

April 8, 2010

Honorable Jim Holperin  
Co-Chair Joint Committee for Review  
of Administrative Rules  
Room 409 South State Capitol  
PO Box 7882  
Madison WI 53707-7882

Honorable Josh Zepnick  
Co-Chair Joint Committee for Review  
of Administrative Rules  
Room 219 North State Capitol  
PO Box 8952  
Madison WI 53708-8952

Re: Clearinghouse Rule 10-005

Dear Senator Holperin and Representative Zepnick:

Enclosed are copies of Clearinghouse Rule 10-005 in final draft form, and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats.

Sincerely,

Roger M. Ervin  
Secretary of Revenue

RME:DSK  
e:rules\117 Committees - JCRAR

Enclosure

## PROPOSED ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **create** Tax 1.17; **relating to** the ambulatory surgical center assessment.

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### *Analysis by the Department of Revenue*

**Statutes interpreted:** ss. 146.98 and 20.566 (1) (gn), Stats.

**Statutory authority:** ss. 146.98 (3), (4), and (5) and 227.24 Stats.

**Related statute or rule:** section 50.38, Stats., imposes a hospital assessment, and s. 50.14, Stats., imposes an assessment on licensed nursing home beds and intermediate care facilities for the mentally retarded (ICF-MR).

**Plain language analysis:** This proposed rule does the following:

- Establishes the requirements for administration of the ambulatory surgical center assessment.
- Describes how the amount of the assessment for each ambulatory surgical center is determined.
- Details how the department will collect assessments.
- Provides guidance regarding data required to be submitted to the department to determine assessment amounts.
- Specifies the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

**Summary of, and comparison with, existing or proposed federal regulation:** Federal law 42 CFR §433.68 describes permissible health care-related taxes that states may impose without a reduction in Medicaid Federal Financial Participation (FFP) in the medical assistance program jointly funded by the federal government and the state. The taxes must be broad based, uniformly imposed throughout a jurisdiction, and cannot exceed 5.5% of revenues. Ambulatory surgical center or ASC is defined in 42 CFR §416.2 as "any distinct entity that operates for the purposes of providing surgical services to patients not requiring hospitalization, has an agreement with the Center for Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C of this part."

### **Comparison with rules in adjacent states:**

Illinois imposes health care provider taxes on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, and nursing homes. There is no assessment of ambulatory surgical centers.

Iowa imposes a health care provider tax on intermediate care facilities for the mentally retarded or developmentally disabled. There is no assessment on ambulatory surgical centers.

Michigan imposes a health care provider tax on hospitals, managed care organizations, nursing homes and community mental health programs. There is no assessment on ambulatory surgical centers.

Minnesota imposes a health care provider tax on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, managed care organizations, and nursing homes. In addition, a tax of 2% of total gross receipts is imposed on surgical centers.

**Summary of factual data and analytical methodologies:** 2009 Wisconsin Act 28 created s. 146.98 Stats., imposing an assessment on Medicare-certified ambulatory surgical centers in Wisconsin. The statute directs the department of revenue to allocate any assessment imposed among ambulatory surgical centers in proportion to their gross patient revenue. The department may determine the amount of the assessment, collect the assessment, require ambulatory surgical centers to provide any data that is required to determine assessment amounts, establish deadlines by which assessments shall be paid, and impose penalties for failure to comply with the requirements of the statute or any rules promulgated. The department is directed to transfer 99.5 percent of the assessments collected to the medical assistance trust fund and retain 0.5% of the assessment revenues collected to support the administrative costs related to the assessment.

Within the provisions of s. 146.98 (5), Stats., is a requirement that the department promulgate rules for the administration of the assessment.

In consultation with ambulatory surgical centers, the departments of administration and health services, the department has created this proposed rule order to satisfy the above requirements.

**Analysis and supporting documents used to determine effect on small business:** This proposed rule is created in accordance with 2009 Wisconsin Act 28 to administer and enforce statutory requirements relating to the assessment of ambulatory surgical centers. As the rule does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

**Anticipated costs incurred by private sector:** This proposed rule does not have a significant fiscal effect on the private sector.

**Effect on small business:** This proposed rule does not have a significant effect on small business.

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this proposed rule.

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**SECTION 1.** Tax 1.17 is created to read:

**Tax 1.17 Ambulatory surgical center assessment. (1) PURPOSE.** The purpose of this section is to establish procedures and other requirements necessary for levying and collecting the ambulatory surgical center assessment imposed under s. 146.98, Stats.

**(2) DEFINITIONS.** In this section:

(a) "Ambulatory surgical center" has the meaning given in s. 146.98 (1), Stats.

(b) "Cash basis" is the method of accounting where income is reported in the year that it is actually or constructively received in the form of cash or its equivalent or other property.

(c) "Department" means the department of revenue.

(d) "Gross patient revenue" means the gross amount received on a cash basis by the ambulatory surgical center from all patient services.

(e) "Patient services" include any of the following goods and services provided to a patient or consumer:

1. Bed and board.
2. Nursing services and other related services.
3. Use of the ambulatory surgical center.
4. Medical social services.
5. Drugs, biologicals, supplies, appliances and equipment.
6. Other diagnostic or therapeutic items or services.
7. Medical or surgical services.
8. Laboratory services.
9. Items and services furnished to ambulatory patients not requiring emergency care.
10. Emergency services including ambulance services.

**(3) REGISTRATION.** (a) Ambulatory surgical centers in this state shall register with the department, in the manner prescribed by the department.

(b) On or before January 1, ambulatory surgical centers in this state shall notify the department of a change in ownership, address change; the date the ambulatory surgical center commences or ceases operations, and any other information pertinent to the ambulatory surgical center's assessment under s. 146.98, Stats., occurring in the previous calendar year. The department may register or modify registration for an ambulatory surgical center based on the information provided under this paragraph.

(c) The department may register or modify registration for an ambulatory surgical center based on information specified in par. (b) received from the department of health services.

**(4) ANNUAL GROSS PATIENT REVENUE SURVEY.** (a) The department shall annually survey ambulatory surgical centers required to be registered under sub. (3) (a) to obtain any data required by the department to administer the assessment imposed in s. 146.98, Stats. Survey data filed shall be subject to the confidentiality provisions under s. 71.78, Stats.

(b) Ambulatory surgical centers shall electronically file the survey annually on or before March 15.

(c) Ambulatory surgical centers may apply for a 5 day extension of the survey due date. An extension will be granted for good cause only. The application for an extension shall be filed electronically with the department on or before March 15 at <https://tap.revenue.wi.gov>.

(d) Failure to electronically file the survey with the department by the due date, including any extension, shall result in a late filing penalty of \$500 per day calculated from the day after the unextended due date up to, but not including, the date the completed

survey is received by the department, or April 1, whichever is earlier. Failure to file the survey during the period for the extension shall make the extension null and void.

**Examples:** 1) An ambulatory surgical center does not request an extension to file the annual survey and fails to file the survey by April 1, 2010. A daily \$500 late filing penalty is assessed for the period of March 16, 2010 through March 31, 2010, for a total late filing penalty of \$8,000.

2) An ambulatory surgical center is granted an extension, and files the annual survey on March 19, 2010. No late filing penalty is assessed.

3) An ambulatory surgical center is granted an extension to file the annual survey, but files the survey on March 24, 2010, after the expiration of the 5 day extension. A \$4,000 late filing penalty is assessed for the period of March 16, 2010 through March 23, 2010.

(e) If an ambulatory surgical center fails to file the survey by April 1, or files an incomplete or incorrect survey, the department shall impose the assessment based upon the information in the department's possession and according to its best judgment. This may include the use of data received from the ambulatory surgical center for prior periods.

(f) A penalty of 25% of the amount of the assessment may be added to an assessment imposed under par. (e), if the ambulatory surgical center fails to file a survey by April 1, pursuant to s. 146.98 (3) (e), Stats.

(g) An ambulatory surgical center may electronically file an amended survey to modify previously filed survey information. The deadline for filing an amended survey is April 1.

**(5) ASSESSMENT.** (a) The assessment shall be calculated using a uniform percentage that satisfies the requirements under 42 CFR 433.68 for collecting an assessment without incurring a reduction in federal financial participation under the federal Medicaid program.

(b) The department shall electronically notify an ambulatory surgical center of the amount of the assessment on April 15.

(c) The assessment shall be paid electronically on or before June 1 of each year in a manner prescribed by the department. Failure to pay the assessment by June 1 shall result in a penalty of \$500 per day calculated from the day after the due date up to, but not including, the date the assessment is received by the department, subject to a maximum penalty equal to the amount of the assessment. Payment of the penalty under this paragraph does not relieve the ambulatory surgical center from the responsibility of paying the assessment.

(d) The department may require estimated pre-payment of the assessment, in a manner prescribed by the department. The department shall notify ambulatory surgical centers at least 90 days before the first estimated pre-payment is due.

**(6) AUDIT.** (a) The department may conduct an office or field audit to determine the assessment under s. 146.98, Stats., or to ascertain the correctness of the information reported on the annual survey required to be filed under sub. (4) (b).

(b) Ambulatory surgical centers shall retain financial books and records that support the information reported on the annual survey, for a minimum period of four years after the March 15 due date of the survey required to be filed under sub. (4) (b), and provide it to the department pursuant to s. 146.98 (3) (c), Stats., if requested.

(c) The department may impose a penalty equal to the amount of any unreported gross patient revenue multiplied by the percentage established for that period in sub. (5) (a).

**(7) APPEALS.** Ambulatory surgical centers claiming to be adversely affected by the department's action or inaction, other than a rulemaking action or proposal for legislation, may petition the department for a contested case hearing under s. 227.42,

Stats. The request for hearing shall be in writing and served upon the secretary of revenue within 30 days after the department's action or inaction as stated in the petition.

**Note:** Written requests for hearing should be addressed to: Wisconsin Department of Revenue, Office of the Secretary, P.O. Box 8933, Madison, WI 53708.

**(8) COLLECTIONS.** (a) Assessments under sub. (5) (c) are considered delinquent if not paid when due, unless the department receives a request for hearing under sub. (7).

(b) The department may immediately proceed to collect delinquent assessments, including any penalties, in a manner comparable to that described in s. 77.62, Stats.

(c) Assessments unpaid for more than 90 days after appeal rights have expired shall be posted on the list on the Internet site maintained by the department under s. 73.03 (62), Stats.

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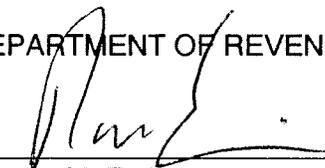
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

#### **Initial Regulatory Flexibility Analysis**

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: 4/6/2010

DEPARTMENT OF REVENUE

By:   
\_\_\_\_\_  
Roger M. Ervin  
Secretary of Revenue

**FISCAL ESTIMATE FORM**

**2009 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB # 09-

**INTRODUCTION #**

Admin. Rule # Tax 1.17

**Subject**

**Fiscal Effect**

State:  No State Fiscal Effect  
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget  Yes  No

Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive  Mandatory  
 2.  Decrease Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory  
 4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others \_\_\_\_\_  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used In Arriving at Fiscal Estimate:**

2009 Act 28 created s. 146.98, which directs the Department of Revenue to collect an annual assessment on ambulatory surgical centers in this state in proportion to their gross patient revenue, and to promulgate rules to implement the assessment.

This rule does the following:

- establishes the requirements for administration of the ambulatory surgical center assessment;
- describes how the amount of the assessment for each ambulatory surgical center is determined;
- details how the department will collect assessments;
- provides guidance regarding data required to be submitted to the department to determine assessment amounts; and
- specifies the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

The fiscal effect of the assessment under s. 146.98 was included in the fiscal effect of 2009 Act 28. Therefore this rule has no fiscal effect.

(continued on page two)

**Long-Range Fiscal Implications:**

Agency/Prepared by: Michael Oakleaf Wisconsin Department of Revenue 261-5173	Authorized Signature/Telephone No. Rebecca Boldt 261-6785	Date November 25, 2009
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**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect

**2009 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

**LRB # 09**  
**INTRODUCTION #**

Admin. Rule #  
 Tax 1.17

Subject

**I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringe	\$	\$ -
(FTE Position Changes)	( FTE)	( - FTE)
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	\$	\$ -
<b>B. State Costs by Source of Funds</b>		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	\$	-
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	\$	\$ -

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ See Text _____	\$ _____

Agency/Prepared by: Michael Oakleaf Wisconsin Department of Revenue 261-5173	Authorized Signature/Telephone No. Rebecca Boldt 261-6785	Date November 25, 2009
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## DEPARTMENT OF REVENUE

### CLEARINGHOUSE RULE NUMBER 10-005

#### SECTION 227.19(2) AND (3), STATS., REPORT

##### **Basis and Purpose of the Proposed Rule**

The rule is necessary to establish the requirements for administration of the ambulatory surgical center assessment; describe how the amount of the assessment for each ambulatory surgical center is determined; detail how the department will collect assessments; provide guidance regarding data required to be submitted to the department to determine assessment amounts; and specify the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

##### **Public Hearing**

A public hearing was held on February 11, 2010. Testimony was offered by Eric Ostermann, Executive Director of the Wisconsin Surgery Center Association (WISCA); LoAnn Vande Leest, past President of the WISCA; and Sandy Schlee, current President of the WISCA. The testimony provided is reflected in the attached written comments provided by the representatives of the WISCA, and also submitted by Sara McCallum, Legislative Chair of the WISCA.

##### **Summary of Public Comments and Agency Response**

The attached written comments were submitted by the WISCA on February 17, 2010. Substantively the same written comments were also provided by several individual ambulatory surgical centers operating in Wisconsin. Comments were received from: NovaMed Surgery Center of Madison; Gastrointestinal Associates Endoscopy Center; Orthopedic & Sports Institute of the Fox Valley; and Niagara Health Center. In addition, comments relating to the effect of the ASC assessment on patients and providers were received from the Menomonee Falls Ambulatory Surgical Center and the Center for Aesthetics and Plastic Surgery. Among those comments was a request for further clarification of the definition of "gross patient revenue."

In consultation with the Department of Health Services, the Department concluded that no changes to the proposed rule would be made as a result of the comments received. It is the Department's belief that the comments and suggested changes are either not germane to or could adversely affect the administration of the ambulatory surgical center assessment. The Department prepared a formal response to the comments submitted by the WISCA, which is attached to this report.

##### **Legislative Council Staff Recommendations**

All Legislative Council staff recommendations have been incorporated in the proposed rule order, with the following exceptions:

- A recommendation was made to place the registration requirements in the text of Tax 1.17 (3) (a). Registration requirements can vary depending on whether an ambulatory surgical center is registered for one or more other tax types. The

Department desires to maintain flexibility in the requirements in the event of changes in the business structure of individual ambulatory surgical centers and how the assessment is required to be administered in order to meet the needs of the Department of Health Services and to comply with applicable federal regulations, therefore, the recommended detail has not been provided.

- A recommendation was made to specify that the 25% penalty imposed in Tax 1.17 (4) (f) applies for failure to file an amended survey by April 1. Clarification has been provided that the penalty in fact applies for failure to file an original survey by April 1.

### **Regulatory Flexibility Analysis**

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.



February 17, 2010

Wisconsin Department of Revenue  
Attention: Dale Kleven  
D.O.R. Mail Stop 6-40  
2135 Rimrock Road  
P.O. Box 8933  
Madison, WI 53708-8933

**RE: Public hearing comments on the ambulatory surgical center assessment (ASCA), Tax 1.17**

The Association of Wisconsin Surgery Centers (WISCA) appreciates the opportunity to provide comments on the proposed rule pertaining to ambulatory surgery centers. WISCA represents a growing number of surgery centers throughout the state of Wisconsin that provide high quality outpatient surgery on a rising number of procedures. WISCA also appreciates the Department's willingness throughout this process to work through what we believe to be a very complex implementation of the assessment.

**Comments on Tax 1.17, Ambulatory Surgical Center Assessment**

**1.17 (2)(d) Definitions, "Gross Patient Revenue"**

The current definition includes the gross amount received on a cash basis by surgery centers from all patient services. To accurately assess the centers, this sentence should conclude with "less refunds during the same year."

**1.17 (2)(e) Definitions, "Patient Services"**

In this section there are listed ten different services, four of which surgery centers do not provide for their patients or charge for. We request the following on the list be removed to more accurately represent services that are provided: Bed and Board (#1), Medical Social Services (#4), Laboratory Services (#8) and Emergency Services Including Ambulatory Services (#10).

**1.17 (4)(a) Annual Gross Patient Revenue Survey, Confidentiality**

In this section it states that survey data filed shall be subject to confidentiality provisions under "s. 71.78, Stats". It is very important to ASC's that proprietary information relating to our businesses be protected by a confidentiality clause and there are questions as to whether or not this is covered under this statutory reference.

**1.17 (5)(a) – Interpretation of Uniform Assessment**

Although WISCA agrees the federal rule requires the same application of the same terms to all ASCs, we further believe the percentage can be different by payer type, if applied in the same manner to all ASCs. Applying the assessment in this manner would allow Medicare revenues to be assessed at a lower rate than other payers to help flatten the range of payment owed across centers. Specifically, we believe a two-tiered system would meet the needs of ASCs, would not decrease the amount of revenues collected by the state, and would still comply with the federal regulations.

**1.17 (5)(d) Assessment , Requirement of pre-payment**

Through our talks with the department we believe that it was agreed upon that language requiring pre-payment would not be part of the rule. While this section leaves flexibility with the department stating that it "may require estimated pre-payment of the assessment, in a manner prescribed by the department", it is our contention that the language will in the end result in a requirement of pre-payment. We believe this authority should be eliminated from the rule as it imposes an unnecessary complex compliance burden on providers.

**Additional concerns in regard to rule implementation:**

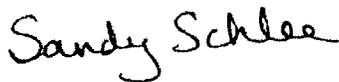
**Survey Data**—Recently, letters were sent to Wisconsin ASC's detailing what information will be requested of them as they provide data that will be used to make an assessment. Any requests made for data related to "bad debt", "charity care", or other variables that fall outside of the data necessary to make the assessment we believe are superfluous and outside of the proposed rule.

**Assessment's Application for New Surgery Centers**—Assessing new surgery centers similarly to existing ones for purposes of the tax will result in skewed results. Centers that are new businesses, and have not been in operation for a full year could be assessed inconsistently with what their true gross revenues and total refunds paid would be in a given year. We would like to see a process established accounting for ASC's without a full year's data.

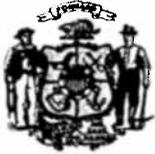
While we understand this isn't the place to argue the merits of this particular provider tax, we think it is important to note that Wisconsin's surgery centers already pay sales tax in our state. The addition of the assessment, especially at 5.5%, could very likely result in weakening ASC's around the state. Some may have to reduce hours, or in the worst cases close their doors. In either case, the result is less access to high-quality low cost care in Wisconsin.

Thank you again for the opportunity to comment on the proposed rules. We would be glad to answer any questions you have related to our comments.

Sincerely,



Sandy Schlee  
President



State of Wisconsin • DEPARTMENT OF REVENUE

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PHONE (608) 266-6798 • FAX (608) 261-6240 • [diane.hardt@revenue.wi.gov](mailto:diane.hardt@revenue.wi.gov)

April 5, 2010

Eric Ostermann, Executive Director  
Lois Vande Leest, Past President  
Sandy Schlee, President  
Association of Wisconsin Surgery Centers, Inc.  
702 Eisenhower Drive, Suite A  
Kimberly, WI 54136

Dear Mr. Ostermann, Ms. Vande Leest & Ms. Schlee,

Thank you for the written comments submitted on behalf of the Association of Wisconsin Surgery Centers, Inc. regarding Tax 1.17, the rule proposed by the Department of Revenue for administration of the ambulatory surgical center (ASC) assessment.

Your association has provided important guidance and insight to the Department throughout the imposition of the ASC assessment and development of the proposed rule. We are grateful for the assistance and information you have contributed. Your written comments expressed several concerns, beginning with statements regarding the definition of the terms "gross patient revenue" and "patient services".

2009 Wisconsin Act 28, the legislation imposing the ASC assessment, requires the Department to allocate and collect a predetermined revenue target among ASC's in proportion to their gross patient revenue. Since neither the statute nor the Code of Federal Regulations referred to in the statute defines "gross patient revenue", the Department looked for guidance from other state laws governing assessments on health care providers. Other states have defined gross patient revenue to mean the total receipts from services to patients. The definition proposed by the Department in section (2)(d) of the rule assesses the gross patient revenue of all ASC's uniformly, and results in assessing only the actual revenue paid to ASC's for services provided to patients, excluding revenue not collected due to bad debt expense, charity care, payer discounts and patient services that did not result in cash inflows to the ASC. Your comments requested modifying the Department's proposed definition by adding the phrase "less refunds during the same year." This language is unnecessary to meet the requirement to uniformly impose the assessment among all ASC's subject to the assessment.

You also indicated that some of the different services listed in the definition of patient services were services "which surgery centers do not provide for their patients or do not charge for." The Department adapted its definition of "patient services" from the definition used by the State of Minnesota for the ASC assessment imposed in that state. We believe that given the statutory requirement to allocate the assessment in proportion to gross patient revenue, the Legislature intended to base the assessment on a broad measure of patient revenue. The Department's definition states "patient services" include any of the following goods and services provided to a patient or consumer, followed by a list of specific services. The rule does not require ASC's report revenue from all of the specified services, rather it requires they report revenue from any services that ASC's actually provide to patients. Therefore, a change to the definition of "patient services" is unnecessary.

The next issue raised in the association's comments was the importance of protecting the proprietary information relating to an ASC's business. As you are aware, it was always the Department's intention to protect the confidentiality of ASC's survey data submitted to the Department. All information filed by ASC's as part of the annual survey required in the rule will be treated as confidential tax information, in accordance with the confidentiality provisions governing the protection of tax return information found in s. 71.78, Wis. Stats.

At several points during the Department's planning for the implementation of the assessment, your association requested that the Department consider imposing the assessment on Medicare revenues at a lower rate than the assessment imposed on other types of ASC revenue. We have explored this request and discussed the possibility of adjusting the allocation among payer types and revenue streams. After discussions with the Department of Health Services (DHS) and Department of Administration (DOA), it is our position that such a method of assessment would violate federal rules requiring that health care provider assessments be uniformly imposed, and would undermine our ability to collect the predetermined revenue target authorized in 2009 Wisconsin Act 28.

You requested that the rule not include language requiring pre-payment of the assessment, and that such a requirement "...imposes an unnecessary complex compliance burden on providers." While we have no plans to impose a pre-payment requirement for the assessment, we believe it is appropriate to provide the Department with the authority to require pre-payment in the future. The June 1 due date for payment of the assessments is specified in the proposed rule, and any decision to establish a pre-payment requirement would require 90 days notice before the first estimated pre-payment would be due.

Finally, you expressed concerns with the type of information requested of ASC's in their annual survey filing, and a belief that assessing "new" surgery centers similarly to existing surgery centers would cause skewed results. The Department is required to administer the assessment in a manner that complies with the statute and with federal regulations governing health care provider assessments. With that in mind, we have requested all ASC's to file the same information; information that is necessary to properly allocate the assessment in proportion to the ASC's gross patient revenue. This will allow us to make comparisons and determine the reasonableness of the information filed. This will result in assessments that are imposed uniformly.

Thank you for your comments on the proposed rule. We appreciate your assistance in the administration of the ASC assessment.

Sincerely,



Diane L. Hardt, Administrator  
Income, Sales & Excise Tax Division





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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 10-005**

AN ORDER to create Tax 1.17, relating to the ambulatory surgical center assessment.

Submitted by **DEPARTMENT OF REVENUE**

01-14-2010 RECEIVED BY LEGISLATIVE COUNCIL.

02-12-2010 REPORT SENT TO AGENCY.

RS:LR

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]  
Comment Attached            YES             NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
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### CLEARINGHOUSE RULE 10-005

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 2. Form, Style and Placement in Administrative Code

a. Section Tax 1.17 (2) (a) creates the acronym “ASC” but the acronym is never used in the rule. If the acronym is not used in the remaining rule text, it should be removed from the definition in s. Tax 1.17 (2) (a).

b. In s. Tax 1.17 (3) (a), the phrase “are required to be registered” should be replaced by the phrase “shall register.” [If the department intends to create a form for this purpose, the requirements of s. 227.14 (3), Stats., should be met.]

c. In s. Tax 1.17 (4) (e), the word “chapter” should be replaced by the word “section.”

d. In s. Tax 1.17 (5) (c), the word “subdivision” should be replaced by the word “paragraph.”

e. In s. Tax 1.17 (7), the phrase “Secretary of Revenue” should be shown all in lowercase.

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Tax 1.17 (3) (a) states that ambulatory surgical centers are required to be registered with the department in the manner prescribed by the department. To the extent possible, registration requirements should be placed in the text of the rule.

b. In s. Tax 1.17 (3) (c), what information will be provided by the Department of Health Services to update ambulatory surgical center registration?

c. Section Tax 1.17 (4) (b) should be rephrased to clarify that all ambulatory surgical centers are required to be registered. The way it is currently phrased, the rule implies that only some centers are required to register. [See sub. (4) (a).]

d. Section Tax 1.17 (4) (d) provides that a filing penalty will be calculated from the day after an unextended due date up to the date the completed survey is received from the department. Does the phrase "up to the date" mean that a penalty will be imposed on the day that the completed survey is received by the department? This should be clarified. [See also sub. (5) (c).]

e. Section Tax 1.17 (4) (e) refers to an "amended survey." Where is the authorization to file an amended survey located in the rule? This should be clarified in the rule. In addition, in this paragraph, delete the words "make an" prior to the word assessment and insert "impose the"; delete the words "any other" and replace it with the word "the"; and clarify what the department's "best judgment" is in relation to its decision to make the assessment.

f. In s. Tax 1.17 (4) (f), the word "amended" should be inserted prior to the word "survey," since the April 1<sup>st</sup> due date applies to the filing of an amended survey.

g. In s. Tax 1.17 (5) (c), after the first reference to "June 1" the phrase "of each year" should be inserted to clarify that the assessment payment is an annual requirement.

h. In s. Tax 1.17 (5) (d), "pre-" should be inserted before the last reference to the word "payment."

i. In s. Tax 1.17 (6) (b), for how long must an ambulatory surgery center retain financial books and records?

j. In s. Tax 1.17 (7), the phrase "complained of" should be replaced by "as stated in the petition."

k. In s. Tax 1.17 (8) (a), the phrase "shall become" should be replaced by "are considered."