

State of Wisconsin



2013 Senate Bill 560

Date of enactment: April 8, 2014
Date of publication*: April 9, 2014

2013 WISCONSIN ACT 236

AN ACT *to repeal* 50.36 (3g) and 50.36 (6m) (a) 1.; *to amend* 50.35, 50.36 (1), 50.36 (2) (a), 50.36 (2) (b), 50.36 (3m), 50.36 (4), 50.36 (6m) (a) (intro.), 50.36 (6m) (a) 2., 50.36 (6m) (a) 3., 50.36 (6m) (b), 50.37 (intro.), 50.37 (4), 50.39 (1) and 323.19 (1); and *to create* 50.33 (1c), 50.33 (3), 50.36 (1m), 50.36 (3) (am) and 50.36 (3L) of the statutes; **relating to:** regulation of hospitals, granting rule-making authority, and requiring the exercise of rule-making authority.

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

SECTION 1. 50.33 (1c) of the statutes is created to read:

50.33 (1c) “Conditions for Medicare participation for hospitals” means the conditions of participation specified under 42 CFR 482 or, with respect to critical access hospitals, 42 CFR 485.

SECTION 2. 50.33 (3) of the statutes is created to read:

50.33 (3) “Requirements for hospitals” means all of the rules, standards, and requirements described in or promulgated under ss. 50.32 to 50.39 that apply to hospitals, including the standards described under s. 50.36 (1).

SECTION 3. 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 for hospitals~~. The department shall issue a single certificate of approval for the University of Wisconsin Hospitals and Clinics Authority that applies to all of the Authority’s inpatient and outpa-

tient hospital facilities that meet the requirements established by the department for hospitals and for which the Authority requests approval. For a free-standing pediatric teaching hospital, the department shall issue a single certificate of approval that applies to all of the hospital’s inpatient and outpatient hospital facilities that meet the requirements ~~established by the department for hospitals~~ and for which the hospital requests approval. 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~~ the requirements for hospitals 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.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

SECTION 4. 50.36 (1) of the statutes is amended to read:

50.36 (1) The department may use and enforce the conditions in 42 CFR 482.60 as standards that apply to psychiatric hospitals, which are hospitals primarily engaged in providing psychiatric services for the diagnosis and treatment of persons who have mental illness. Beginning on July 1, 2016, except as otherwise provided under ss. 50.32 to 50.39, the department shall use and enforce the conditions for Medicare participation for hospitals as the minimum standards that apply to hospitals. The department shall interpret the conditions for Medicare participation for hospitals using guidelines adopted by the federal centers for medicare and medicaid services, unless the department determines that a different interpretation is reasonably necessary to protect public health and safety. The department shall may promulgate, adopt, amend, and enforce such additional rules and standards for hospitals for the construction, maintenance, and operation of the hospitals deemed that the department determines are necessary to provide safe and adequate care and treatment of the hospital patients ~~in the hospitals~~ and to protect the health and safety of the patients and employees; ~~and nothing contained herein shall pertain to a person licensed to practice medicine and surgery or dentistry.~~ The building codes and construction standards of the department of safety and professional services shall apply to all hospitals and ~~the department may adopt additional construction codes and standards for hospitals, provided to the extent that they are not lower than the requirements of the department of safety and professional services incompatible with any building codes or construction standards required by the conditions for Medicare participation for hospitals.~~ Except for the construction codes and standards of the department of safety and professional services and except as provided in s. 50.39 (3), the department shall be the sole agency to adopt and enforce rules and standards pertaining to hospitals.

SECTION 5. 50.36 (1m) of the statutes is created to read:

50.36 (1m) (a) Notwithstanding sub. (1) and except as provided pars. (b) and (c), all of the following apply:

1. Beginning on July 1, 2016, the department may not enforce any of the rules contained in s. DHS 124.40 or subch. II, III, or IV of ch. DHS 124, Wis. Adm. Code, in effect on the effective date of this subdivision [LRB inserts date].

2. The department shall, within the scope of the department's rule-making authority under sub. (1), promulgate rules to repeal and recreate ch. DHS 124, Wis. Adm. Code.

(b) Paragraph (a) 1. does not apply to s. DHS 124.24 (3), Wis. Adm. Code.

(c) Paragraph (a) does not apply beginning on the date that a permanent rule promulgated under ch. 227 that

repeals and recreates ch. DHS 124, Wis. Adm. Code, takes effect as provided in s. 227.22.

SECTION 6. 50.36 (2) (a) of the statutes is amended to read:

50.36 (2) (a) The Notwithstanding sub. (3L), the department shall conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with any applicable building code requirements under ch. 101 and with any physical plant requirements under this chapter or under rules promulgated under this chapter.

SECTION 7. 50.36 (2) (b) of the statutes is amended to read:

50.36 (2) (b) The department shall promulgate rules that establish a fee schedule for its services in conducting the plan reviews under par. (a). ~~The schedule established under these rules shall set fees for hospital plan reviews in amounts that are less than the sum of the amounts required on September 30, 1995, for fees under this subsection and for fees for examination of hospital plans under s. 101.19 (1) (a), 1993 stats.~~

SECTION 8. 50.36 (3) (am) of the statutes is created to read:

50.36 (3) (am) A hospital may grant any practitioner the opportunity to be a member of the hospital staff and obtain hospital staff privileges if the membership or privileges are not prohibited under sub. (1) and are consistent with the practitioner's scope of practice.

SECTION 9. 50.36 (3g) of the statutes is repealed.

SECTION 10. 50.36 (3L) of the statutes is created to read:

50.36 (3L) A hospital accredited by an approved national accrediting organization pursuant to 42 USC 1395bb (a) (1) is exempt from routine inspections and investigations to determine compliance with and is considered to be in compliance with the requirements for hospitals. The department may inspect an accredited hospital to investigate a complaint or comply with the request of the federal centers for medicare and medicaid services, including a request to validate the findings of the accrediting organization.

SECTION 11. 50.36 (3m) of the statutes is amended to read:

50.36 (3m) The department shall require a hospital that is accredited as a hospital by a private national accrediting organization pursuant to 42 USC 1395bb (a) (1) to submit to the department ~~a copy of the summary accreditation recommendation and may require the hospital to submit to the department copies of all correspondence sent or received on or after August 30, 1989, including survey results, between the hospital and the accrediting organization. Accreditation letters, reports and related~~ evidence of current accreditation. Any evidence of accreditation and other accreditation-related correspondence or other materials submitted by or on behalf of a hospital to the department, except those sub-

mitted by a county mental health complex under s. 51.08, under this subsection are not subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the department.

SECTION 12. 50.36 (4) of the statutes is amended to read:

50.36 (4) ~~The~~ Except as provided in sub. (3L), the department shall make or cause to be made such inspections and investigation, as are reasonably deemed necessary to obtain compliance with the ~~rules and standards requirements for hospitals.~~ It shall afford an opportunity for representatives of the hospitals to consult with members of the staff of the department concerning compliance and noncompliance with ~~rules and standards~~ the requirements for hospitals. If the department takes enforcement action against a hospital for a violation of ~~ss. 50.32 to 50.39, or rules promulgated or standards adopted under ss. 50.32 to 50.39~~ the requirements for hospitals, and the department subsequently conducts an on-site inspection of the hospital to review the hospital's action to correct the violation, the department may, unless the hospital is operated by the state, impose a \$200 inspection fee on the hospital.

SECTION 13. 50.36 (6m) (a) (intro.) of the statutes is amended to read:

50.36 (6m) (a) (intro.) The secretary or his or her designee may grant a variance to ~~a statute affecting hospitals or a rule~~ or a waiver from any of the department affecting requirements for hospitals if all of the following apply:

SECTION 14. 50.36 (6m) (a) 1. of the statutes is repealed.

SECTION 15. 50.36 (6m) (a) 2. of the statutes is amended to read:

50.36 (6m) (a) 2. A hospital has requested the variance or waiver.

SECTION 16. 50.36 (6m) (a) 3. of the statutes is amended to read:

50.36 (6m) (a) 3. The secretary or his her designee determines that the variance or waiver is necessary to protect the public health, safety, or welfare or to support the efficient and economic operation of the hospital.

SECTION 17. 50.36 (6m) (b) of the statutes is amended to read:

50.36 (6m) (b) A variance or waiver granted under par. (a) shall may be for a stated term ~~not to exceed 90 days, except that.~~ If a variance or waiver is for a stated term, the secretary or his her designee may extend the variance or waiver upon request by the hospital if he or she determines that an extension is necessary to protect the public health, safety, or welfare or to support the efficient and economic operation of the hospital.

SECTION 18. 50.37 (intro.) of the statutes is amended to read:

50.37 Notification to accrediting organization. (intro.) The department shall notify a ~~private~~ national accrediting organization that has accredited a hospital and the board of governors of the injured patients and families compensation fund under s. 619.04 (3) if the department has done any of the following:

SECTION 19. 50.37 (4) of the statutes is amended to read:

50.37 (4) Recommended to the federal ~~health care financing administration centers for medicare and medicaid services~~ that the hospital be decertified from the federal medicare program under 42 USC 1395 to 1395ccc or the federal medicaid program under 42 USC 1396 to 1396r-3 for failure to meet a condition of participation under the program.

SECTION 20. 50.39 (1) of the statutes is amended to read:

50.39 (1) ~~Sections 50.32 to 50.39 and the rules promulgated pertaining thereto shall~~ The requirements for hospitals apply to all facilities coming under the definition of a "hospital" which are not specifically exempt by ss. 50.32 to 50.39.

SECTION 21. 323.19 (1) of the statutes is amended to read:

323.19 (1) The secretary of health services may grant a hospital a variance to ~~a statute or rule affecting~~ or a waiver from a requirement for hospitals ~~in response to a disaster~~ as provided in s. 50.36 (6m).