



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 236
[2013 Senate Bill 560]

Regulation of Hospitals

2013 Wisconsin Act 236 makes various changes to state laws and regulations pertaining to hospitals. The Act provides as follows:

RULES AND STANDARDS FOR HOSPITALS

Prior to Act 236, the Department of Health Services (DHS) was required to promulgate rules and standards it deemed necessary for the construction, maintenance, and operation of hospitals to provide safe and adequate care and treatment of patients and to protect the health and safety of patients and employees. In fulfillment of this requirement, DHS promulgated ch. DHS 124, Wis. Adm. Code. Further, the building codes and construction standards of the Department of Safety and Professional Services (DSPS) applied to all hospitals. However, DHS could adopt additional construction codes and standards for the hospitals, provided they were not lower than the DSPS requirements.

Hospitals that accept patients under the Medicare program are subject to additional standards under the federal Conditions for Medicare Participation (COPS). These regulations are found in 42 CFR Part 482. Critical access hospitals are subject to the regulations in 42 CFR Part 485.

Under Act 236, beginning on July 1, 2016 and except as otherwise provided in ch. 50, Stats., DHS must use and enforce the standards under Medicare COPS as the minimum standards that apply to hospitals. On that date, DHS may not enforce any of the rules contained in s. DHS 124.40, Wis. Adm. Code, (relating to critical access hospital requirements), or any of the administrative rules in ch. DHS 124, relating to management, medical staff, or services of hospitals. The Act requires DHS to promulgate rules to repeal and recreate ch. DHS 124. DHS must interpret the Medicare COPS for hospitals using guidelines adopted by

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

the federal Centers for Medicare and Medicaid Services (CMS), unless DHS determines that a different interpretation is reasonably necessary to protect public health and safety.

Under Act 236, DHS may not adopt additional construction codes and standards for hospitals. The DSPS codes may apply only if they are compatible with the Medicare COPS.

CAPITAL CONSTRUCTION AND REMODELING PLAN REVIEWS

Prior to Act 236, DHS was required to conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with building code requirements and physical plant requirements under ch. 50, Stats., or ch. DHS 124, Wis. Adm. Code. DHS established a fee schedule, by rule, for its services in conducting plan reviews. The schedules set fees for hospital plan reviews in amounts that are not higher than certain specified amounts.

Act 236 retains the requirement that DHS conduct plan reviews of capital construction and remodeling projects, and retains DHS's authority to promulgate rules establishing a fee schedule for the plan reviews, but eliminates the restrictions on amounts in the fee schedule.

HOSPITAL STAFF PRIVILEGES

Prior to Act 236, any person licensed to practice medicine and surgery or podiatry under ch. 448, Stats., had to be given an equal opportunity to obtain hospital staff privileges and could not be denied hospital staff privileges solely for the reason that the person was an osteopathic physician and surgeon or a podiatrist. Each individual hospital retained the right to determine whether the applicant's training, experience, and demonstrated competence is sufficient to justify the granting of full or limited hospital staff privileges.

Also, a hospital that admits patients for treatment of mental illness could grant to a psychologist an opportunity to obtain hospital staff privileges to admit, treat, and discharge patients. Each hospital determined whether the psychologist applicant's training, experience, and demonstrated competence was sufficient to justify the granting of hospital staff privileges or of limited hospital staff privileges.

If a hospital granted a psychologist hospital staff privileges or limited hospital staff privileges as described above, the psychologist or the hospital, prior to or at the time of hospital admission of a patient, had to identify an appropriate physician with admitting privileges at the hospital who was responsible for the medical evaluation and medical management of the patient for the duration of his or her hospitalization.

Under Act 236, 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 by the Medicare COPS or any rules DHS promulgates as provided for under the Act, and are consistent with the practitioner's scope of practice.

Further, the Act repeals the special provisions on the granting of hospital staff privileges to psychologists.

ACCREDITATION

Prior to Act 236, DHS required a hospital accredited by a private accrediting organization to submit to DHS a copy of the summary accreditation recommendation, and could also require the hospital to submit copies of all correspondence sent or received on or after August 30, 1989, including survey results, between the hospital and the accrediting organization. Act 236 modifies the requirements for submittal of hospital accreditation information to the DHS by adding a requirement that the hospital submit “evidence of current accreditation.”

INSPECTIONS

Prior to Act 236, DHS made reasonably necessary inspections and investigations to obtain compliance with applicable rules and standards. If DHS took enforcement action against a hospital for a violation and subsequently conducted an on-site inspection of the hospital to review the hospital’s action to correct the violation, DHS could, unless the hospital is operated by the state, impose a \$200 inspection fee on the hospital.

Under Act 236, a hospital accredited by an approved national accrediting organization is exempt from routine inspections and investigations to determine compliance, and is considered to be in compliance with the requirements for hospitals. Under federal law, accrediting organizations include the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body. The Act permits DHS to inspect an accredited hospital to investigate a complaint or to comply with the request of the federal CMS, including a request to validate the findings of the accrediting organization.

VARIANCES AND WAIVERS

Prior statutes permitted the DHS Secretary to grant a variance (permission to meet a requirement by an alternative means) to a statute affecting hospitals or a DHS rule affecting hospitals if all of the following apply:

- The Secretary or designee determines that a disaster (such as a severe natural or human-caused disaster) has occurred.
- A hospital has requested the variance.
- The Secretary or designee determines that the variance is necessary to protect the public health, safety, or welfare.

A variance granted under the criteria above would be for a stated term not to exceed 90 days, except that the Secretary or designee could extend the variance upon request by the hospital if it was determined to be necessary to protect the public health, safety, or welfare.

Administrative rules provide for broader grants of waivers and variances than the statutes. Under s. DHS 124.04, Wis. Adm. Code, DHS was permitted to grant the waiver or variance if it found that the waiver or variance would not adversely affect the health, safety, or welfare of any patient and that one of the following was true:

- Strict enforcement of a requirement would result in unreasonable hardship on the hospital or on a patient.
- An alternative to a rule, which may involve a new concept, method, procedure, or technique, new equipment, new personnel qualifications, or the conduct of a pilot project, is in the interests of better care or management.

DHS may limit the duration of waivers and variances granted under these provisions, but the statutory 90-day time limit does not apply.

The Act modifies the statutes relating to variances and waivers to align more closely with the administrative code provisions. The Act provides that the Secretary or designee may grant a variance or waiver to a statute or rule if he or she 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.

The Act eliminates the provision in current law that a variance may be granted only if the Secretary or designee determines that a disaster has occurred.

The Act allows, but does not require, the variance or waiver to be for a stated term. If a variance or waiver is for a stated term, the variance or waiver may be extended upon request by the hospital if the Secretary 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.

Effective date: April 10, 2014.

Prepared by: Laura Rose, Deputy Director

May 16, 2014

LR:jb;ty