State of Wisconsin \ Hospital Rate-Setting Commission

JOHN C. OESTREICHER, CHAIRMAN
Steven M. Barney, Commissioner
Suite 315, Tenney Bldg.
110 E. Main Street
Madison, WI 53702
(608) 266-2114

CR 84-117

RECEIVED
NOV 9 1984
10:30 am
Revisor of Statutes Bureau

STATE OF WISCONSIN)
) SS
HOSPITAL RATE-SETTING COMMISSION)

I, John C. Oestreicher, Chairman of the Hospital Rate-Setting Commission and custodian of the official records do hereby certify that the annexed rules relating to implementing the authority of the Commission were duly approved and adopted by this Commission on November 6, 1984.

I further certify that this copy has been compared by me with the original on file in this Commission and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 110 E. Main St. in the city of Madison, this 6th day of November, 1984.

John C. Oestreicher
Chairman

1-1-85

RECEIVED
NOV 9 1984
Revisor of Statutes
Bureau

ORDER OF THE WISCONSIN HOSPITAL RATE-SETTING COMMISSION
ADOPTING RULES

To create chapters HRSC 1 to 4, relating to creating rules to implement the authority of the Wisconsin hospital rate-setting commission.

Analysis by the Hospital Rate-Setting Commission

I. Legal Background

The 1983 biennial executive budget bill (1983 Wisconsin Act 27) created the hospital rate-setting commission as a method of reducing the rate of hospital cost increases, while preserving the quality of health care and taking into account the financial viability of economically and efficiently operated hospitals. Chapter 54, Stats., the enabling authority for this commission, establishes a method for prospective rate setting and a framework for conducting the commission's operations. These rules respond to statutory mandates that require rule-making by the commission and provide additional details in areas where the statutes trace only the outlines of hospital rate setting.

II. Public Participation

The commission revised this rule 10 times prior to its promulgation. Commencing with the 4th draft, each version of the rule has been disseminated broadly. Over 250 interested parties representing many viewpoints have received copies of these drafts; many have responded with extensive comments. The commission sought to facilitate the reading of each new draft by highlighting every change from its predecessor, striking through deletions and underscoring new material in the manner used by the legislature for its bills. The response concerning each draft formed the basis for revisions that created the succeeding draft. In addition to the participation solicited from interested parties, the commission has submitted these drafts to its hospital rate-setting council for discussion and comment.

Members of the commission have engaged in countless meetings with members of citizen groups, accountants, lawyers, hospital administrators, financial officers and regulators throughout the state in order to solicit feedback concerning the commission's proposals and generate better ideas. The commission has also studied the existing Wisconsin hospital rate

review program and rate-setting programs of other states to determine the most feasible method of operation. The commission held 5 public hearings throughout the state to hear oral testimony concerning its rules and has collected written testimony during the course of these hearings.

The commission submitted its proposed rule to the legislature for rules review on September 18, 1984. The assembly committee on health and human services recommended that the commission incorporate several changes into its rule on October 24, 1984. The commission made all changes suggested by the assembly committee prior to promulgating this rule.

III. Description of Rule

The commission's rules are divided into 4 chapters. The first chapter defines general provisions relating to administrative operations, allowing the commission to name agents and organize hearings, explaining how to submit documents to the commission in a timely manner and indicating the commission's methods of assessing its program revenue expenses.

The 2nd chapter is devoted to an explanation of the type of information hospitals will need to submit to the commission. The statutes allow the commission to adopt a uniform reporting system, which it has chosen to do. Chapter 2 lists the information hospitals will be required to provide to the commission as part of this reporting system. The commission will request each hospital to provide background data for a 2-year period (fiscal years 1983 and 1984), which the commission will use to establish trends, develop peer groups, compare hospitals and monitor the quality of health care. This report will occur only once.

Chapter 2 also describes the information that the commission may require annually from hospitals. This portion of the rules is divided into 2 parts: an explanation of the information that large and medium-sized hospitals will submit and the creation of expedited review for small hospitals. Expedited review is designed to reduce the reporting burden imposed on smaller institutions; hospitals with gross annual patient revenue less than $5,000,000 (indexed annually) are required to submit substantially less information to the commission. The information required of small hospitals consists primarily of financial statements, copies of the medicare cost reports, descriptions of changes in ownership and general information concerning the hospital's financial requirements. Large and medium-sized hospitals are required to submit more extensive, specific information.

In the 3rd chapter, the rules indicate that the commission will issue orders to identify which institutions constitute "hospitals" and are subject to regulation by the commission and indicate how the commission will set an annual date when each hospital may request a rate increase. These orders will be made available to the general public. Since the statutes require that hospitals publish a notice of their rate requests in local newspapers, this chapter includes a form that hospitals will use in the publication. The rules also include special provisions for personally notifying those who have indicated an interest in rate requests affecting any particular hospital. If a hospital seeks an interim order due to an emergency, the rules prescribe an abbreviated process for completing these notification requirements.

Chapter 3 fills in details concerning the commission's method of calculating costs (financial requirements) and revenue. While the statutes list financial requirements such as operating expenses, the cost of

conducting teaching programs and bad debts that must be included in determining any hospital's rates, the statutes allow the commission to interpret these requirements. In this chapter the commission indicates how it will determine if a hospital has a sound credit and collection policy, how it will approve education and research program proposals, how it will determine if a hospital's occupancy rate is too low due to excess bed capacity and how it will treat price discounts offered by a hospital to certain payers. In this chapter the commission also specifies the incentives it will offer to hospitals.

Chapter 3 also describes the rates the commission will set for each hospital. The enabling legislation, ch. 54, Stats., directs the commission to establish the level of budgeted patient revenue per hospital as a rate and to set additional rates for hospital services. The law imposes a restraint on the commission's authority to set rates for services, however, by allowing hospital administrators to adjust rates selectively within their facility if the total revenue the hospital generates using these adjusted rates does not exceed the budgeted revenue set by the commission. In the rules the commission has balanced these competing aims of rate-setting responsibilities and managerial discretion by specifying that it will set rates for the most important charge elements of a hospital in the following manner: after the commission establishes a hospital's budgeted patient revenue, the hospital may submit its proposal for selective adjustment of rates to the commission. Each hospital must submit proposed rates for 100 charge elements. These charge elements will be specified by the commission. If the commission determines that this rate structure generates total revenue within the limits of the budget, it will issue an order establishing rates for those charge elements at the levels recommended by the hospital.

The statutes require the commission to approve rate requests from any small hospital, unless the request outpaces the inflation rate. The commission may also refuse to approve a rate if the hospital fails to pass certain screens concerning accounts receivable, wage levels, staffing ratios and percent increases in expenses. In chapter 3, the commission outlines how it will determine reasonable levels of accounts receivable and reasonable staffing ratios.

The statutes governing the commission set forth procedures by which interested parties can challenge decisions of the commission through settlement conferences, informal hearings and formal hearings. Chapter 4 explains how parties can initiate and participate in these proceedings. The rules specify methods of introducing evidence at a hearing, arguing positions, presenting witnesses and preserving testimony.

Chapter 4 also provides a method by which the commission can investigate complaints it receives from consumers. The commission can respond to complaints using informal processes, such as corresponding with the hospital involved and mediating a resolution, or using a formal hearing in certain situations where the issue involved is substantial and the commission is capable of reaching a resolution. The rules also create a method for determining if information submitted to the commission constitutes a trade secret that requires protection.

IV. Additional Notes

Interspersed throughout this draft are frequent notes that analyze particular rules in greater depth. These notes are recommended as addi-

tional reading concerning the statutory basis for the rules and the effect of the rules.

Pursuant to the authority vested in the hospital rate-setting commission by ch. 54, Wis. Stats., the commission adopts the following rules to implement that chapter:

SECTION 1. Chapters HRSC 1 to 4 are created to read:

CHAPTER HRSC 1

GENERAL PROVISIONS

HRSC 1.01 DEFINITIONS. In chs. HRSC 1 to 4 and to interpret provisions of ch. 54, Stats:

(1) "Accounts receivable" means claims arising from rendering patient care services.

(1m) "Ancillary services" means a hospital's clinical, diagnostic and treatment services, not room and board or nursing services.

(2) "Bad debts" means claims arising from rendering patient care services that the hospital, using a sound credit and collection policy, determines are uncollectible. "Bad debts" does not include charity care.

(2m) "Budget year" means the fiscal year of a hospital for which rates are being set during a rate review.

(3) "Case mix" means a measure of the types of patients treated in a hospital during a specified period.

(3m) "Charge element" means any hospital service, supply or combination of services or supplies reported at the direction of the commission.

(4) "Charity care" means reductions in the hospital's charges for patient care services due to indigence of the patient. "Charity care"

does not include bad debts or allowances related to medical assistance, medicare or general relief payments.

(5) "Commission" means the Wisconsin hospital rate-setting commission.

(6) "Fixed cost" means a hospital's expenses that do not generally vary in relation to the hospital's volume.

(7) "General relief" means hospital care for which a municipality or county is liable under s. 49.02 or 49.03, Stats., or hospital care for which the state is liable under s. 49.035, 49.04 or 49.046, Stats.

(8) "Hospital" has the meaning provided in s. 50.33 (1), Stats.

(9) "Intensity" means the standard of care established by the clinical health professions for a given case mix and volume, measured as the number and kind of ancillary services provided and the level of nursing services provided.

(10) "Variable cost" means a hospital's expenses that generally vary in relation to the hospital's volume.

(11) "Volume" includes the following:

(a) The number of inpatient and outpatient admissions at a hospital during a specified period. The commission shall adjust the calculation of outpatient admission volume in recognition of the different level of services provided to outpatients, as compared to inpatients, to create a method of calculating total admissions.

(b) The number of inpatient and outpatient days at a hospital during a specified period. The commission shall adjust the calculation of outpatient days in recognition of the different level of services provided to outpatients, as compared to inpatients, to create a method of calculating total days.

(c) The number of procedures of any particular type performed by a hospital during a specified period.

(d) The number of times any charge element is billed.

HRSC 1.03 NAMING AGENTS. The commission may designate its agents and grant them authority to examine confidential materials, conduct investigations or hearings and perform other functions authorized by the commission. The commission shall issue to each agent an identification card.

HRSC 1.05 SUPERVISOR OF HEARINGS. The chairperson of the commission may assign to each agent the supervision of a particular investigation or, if the assignment is indicated on the commission's calendar, the conduct of a hearing.

HRSC 1.09 COMMUNICATIONS AND DOCUMENTS ADDRESSED TO THE COMMISSION. (1) ADDRESS. All written communications concerning the commission's activities shall be addressed to the commission.

NOTE: The present address of the Commission is as follows:
Wisconsin Hospital Rate-Setting Commission
Room 215
110 E. Main St.
Madison, WI 53702

(2) DOCUMENT FORMAT. Documents shall be printed on 8 and 1/2 by 11 inch paper unless the commission otherwise provides. The first page of each communication or document addressed to the commission shall contain a distinctive title identifying the action requested and, if one exists, a docket number. All written information submitted on behalf of a hospital to the commission shall be signed by the hospital's chief executive officer or a designated agent.

HRSC 1.11 SERVICE OF DOCUMENTS. Service of documents on the commission or other parties in commission proceedings shall be by 1st class or

registered mail or by delivery in person. The date of service is the day the document is postmarked or delivered in person.

HRSC 1.13 ASSESSING COMMISSION EXPENSES. Regardless of whether it actually submits a rate request for that year each hospital shall, within 30 days after the end of its fiscal year, certify to the commission its gross annual patient revenue during the hospital's preceding fiscal year. Commencing July 1, 1985, the commission shall use these data to apportion its assessment of expenses among the hospitals. The commission will make its first annual inflationary adjustment to the $1,500,000 cap on the cost of its operations on July 1, 1984.

NOTE: See s. 54.31, Stats., concerning the Commission's duty to assess part of its costs among hospitals according to each hospital's gross annual patient revenue. To apportion its expenses for calendar year 1985, the Commission will use the most recent data available on gross annual patient revenues.

1983 Wisconsin Act 27, section 2020 (17) (c) 2 indicates that the legislature intends the cost of Commission operations not to exceed $1,500,000 annually, paid one-third by general purpose state revenues and two-thirds by fees charged to hospitals. That section also indicates that this annual spending limit should be adjusted to reflect annual changes in the consumer price index. Section HRSC 1.13 establishes the year on which these consumer price index changes are made. This base year, commencing on July 1, 1983, is used because it begins on the same date 1983 Wisconsin Act 27 became law and is identical to the base year used for adjusting hospital trend factors under s. HRSC 3.09.

HRSC 1.15 HOSPITAL GROSS ANNUAL PATIENT REVENUE. For the purpose of administering ss. 54.13 (1) (b) and 54.21 (2) (a), Stats., and ss. HRSC 1.13 and 3.07 (2) the commission shall, to the extent practicable, calculate the gross annual patient revenue of a hospital that is jointly operated in connection with a nursing home by excluding the revenue generated by the nursing home. To the extent practicable the commission shall use the method specified in s. HRSC 3.017 (1) to complete this calculation.

NOTE: Section 54.13 (1) (b), Stats., authorizes the Commission to disallow a percentage of excess revenue generated by any hospital. Section 54.21 (2) (a), Stats., grants expedited review to hospitals that request only marginal rate increases. Section HRSC 1.13 implements the Commission's method of apportioning its

assessment of expenses among hospitals. Section HRSC 3.07 (2) grants a plant depreciation incentive to hospitals. This rule attempts to separate the revenue generated by a hospital from that generated by a jointly-operated nursing home when the Commission determines the applicability of these sections. Similarly, s. HRSC 3.017 (1) attempts to separate financial requirements generated by a hospital from those generated by a jointly-operated nursing home.

HRSC 1.17 ROLE OF COMPETITION. Consistent with s. 54.01, Stats., one of the commission's regulatory strategies shall be to allow the development of competitive forces in the health care industry. The commission shall, in adopting orders, provide reasonable flexibility for hospitals to compete in the marketplace.

CHAPTER HRSC 2

DATA SUBMISSION

SUBCHAPTER I

GENERAL PROVISIONS

HRSC 2.01 DEADLINES FOR DATA SUBMISSION. (1) TIMETABLE. The following time limits apply to submission of all the information required under subchs. II and III of this chapter:

(a) If the hospital submits its rate request during the 90-day period preceding its scheduled date for review it shall provide the information to the commission on or before the date it submits the rate request.

(b) 1. If the hospital does not submit its rate request during the 90-day period preceding its scheduled date for review, it shall provide the information to the commission within 90 days after the commencement of its fiscal year or on the date it submits a rate request, whichever is earlier.

2. A hospital that is subject to a rate review at any time after its scheduled date for review shall provide to the commission all corrections

to its submission under subd. 1. If the hospital requests the rate review it shall provide these corrections within 5 days after rate review commences. If the commission initiates the rate review the hospital shall provide these corrections within 20 days after it notifies the hospital of the date that rate review commences or on the date that rate review commences, whichever is later.

(2) LATE SUBMISSION. The commission is not required to consider data submitted by a hospital after the deadlines created under sub. (1), unless the commission requests submission of the data during the course of the rate review and the hospital supplies the information within the time limits specified by the commission.

HRSC 2.03 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. Hospitals shall submit all financial information to the commission based on generally accepted accounting principles, unless the commission otherwise provides.

HRSC 2.05 FORMS. The commission may require hospitals to use forms it provides in order to report information. To the extent practicable, the commission shall submit its proposed forms for review and comment by the hospital rate-setting council.

NOTE: Section 54.07 (4), Stats., allows the Commission to require that hospitals conform with a uniform reporting system. Copies of forms the Commission creates will be available at its offices.

HRSC 2.09 AUDITS. The commission may audit the following information:

(1) HOSPITALS. Information of a hospital if the commission determines an audit is necessary to perform its responsibilities with respect to rate setting and monitoring established rates.

(2) HOSPITAL CORPORATE AFFILIATES. Financial or other statistical information of any hospital corporate affiliate, if the information is related to a transaction of services, facilities or supplies with the hospital and the commission finds that an audit is necessary to verify the

transaction and determine if the costs of the transaction are reasonable. The commission may only audit this information when it is conducting a rate review of the hospital and may only audit information pertaining to the hospital's financial requirements. Under no circumstances may the commission audit nonrelated financial information of a religious group that is affiliated with a hospital.

(3) OTHER ORGANIZATIONS. Financial or other statistical information of any patient care or other organization, if the information is related to a transaction of services, facilities or supplies with the hospital and the commission finds that an audit is necessary to verify the transaction and determine if the costs of the transaction are reasonable. The commission may only audit this information when it is conducting a rate review of the hospital and may only audit information pertaining to the hospital's financial requirements. Under no circumstances may the commission audit nonrelated financial information of a religious group that is affiliated with a hospital.

HRSC 2.11 EXEMPTIONS. If a hospital proves to the satisfaction of the commission that it is unable to provide a portion of the information required under subch. II or III of this chapter or that the cost of providing the information is unreasonably burdensome, the commission may exempt the hospital from submitting that information.

NOTE: Section 54.07 (3), Stats., requires hospitals and affiliated organizations to provide the Commission with any information it determines is necessary to perform its responsibilities.

SUBCHAPTER II

FIRST SUBMISSION

HRSC 2.13 INITIAL 2-YEAR REPORT. (1) FISCAL YEARS COVERED. (a) Each hospital shall provide to the commission the information specified in this

section on or before January 15, 1985. This information shall cover the hospital's 1983 and 1984 fiscal years.

(b) All information provided under this section shall be based on actual data for fiscal year 1983 and, to the extent available, for fiscal year 1984. The hospital shall use actual data or its best estimate to calculate accurate information for the remainder of fiscal year 1984.

(2) DATA REQUIRED. For its initial submission under this section, the hospital shall provide the following data:

(a) The annual total medicare, medical assistance and general relief charges billed and payments received. Each hospital shall submit to the commission its estimate of pending payments for fiscal years 1983 and 1984, if any, and its method of calculating the estimate.

(b) 1. The following annual audited financial statements, including the attached notes and auditor's opinion:

a. Income statements indicating the hospital's operations for each year.

b. Statements of changes in the hospital's fund balances for each year.

c. Statements of changes in the hospital's financial position for each year.

d. Balance sheets for the last day of each fiscal year.

2. As part of its submission under subd. 1, each hospital shall also send to the commission any reports that disclose material weaknesses in internal control. Notwithstanding sub. (1) (a), hospitals shall submit their annual audited financial statements for fiscal year 1984 within 45 days after receiving the statements or by January 15, 1985, whichever is later.

NOTE: The standards requiring auditors to prepare these internal control reports are found in s. 323, "Required Communi-

cation of Material Weaknesses in Internal Accounting Control" of the Codification of Statements on Auditing Standards, American Institute of Certified Public Accountants.

(c) The hospital's budgeted and actual level of charity care and Hill-Burton obligations and level of allowance under 42 USC ss. 291 et seq.

NOTE: The Commission requires a one-time report from each hospital, covering fiscal years 1983 and 1984, in order to collect data necessary as background information. The report will be required from each hospital regardless of whether it submits a rate request but will only be required once.

HRSC 2.15 DESCRIPTION OF HOSPITAL AND ASSETS. On or before January 15, 1985, each hospital shall submit a description of its current ownership and size, its current age and the condition of its physical plant. The description of the hospital's current ownership shall include the name, address and principal occupation of each member of the hospital governing board. In addition, the hospital shall provide a summary schedule of its assets and accumulated depreciation.

SUBCHAPTER III

ANNUAL SUBMISSIONS

HRSC 2.17 ANNUAL REPORTS FOR LARGE AND MEDIUM-SIZED HOSPITALS. Regardless of whether it actually submits a rate request for that year each hospital shall, within the time limits specified in s. HRSC 2.01, annually provide to the commission the information specified in this section. Unless otherwise provided, all data submitted shall cover both the budget year and the preceding fiscal year. Small hospitals that are eligible for expedited review under s. HRSC 2.19 are not subject to this section. All data submitted shall be based either on actual data, if available, or on the hospital's best estimated data. For the budget year the hospital shall project its best estimated data from the results of the

preceding fiscal year. Unless the commission determines that submission is not necessary, each hospital shall provide the following information annually:

(1) REVENUES OF REVENUE-PRODUCING COST CENTERS. The aggregate revenues to be generated by each of the hospital's revenue-producing cost centers during the budget year. Commencing with the 1986 submittal of information, each hospital shall submit information concerning the actual revenue generated by each of the hospital's revenue-producing cost centers.

(2) EXPENSES OF COST CENTERS. (a) The expenses of each revenue-producing cost center in the hospital and the expenses of nonrevenue-producing cost centers in the hospital, allocated among revenue-producing cost centers. The commission shall establish the methods hospitals use to allocate expenses not readily identifiable with a particular cost center.

NOTE: Initially, the Commission intends to accept delivery of the medicare cost report as a satisfactory method of submitting the information required in s. HRSC 2.17 (1) and (2) (a) until it creates an appropriate list of cost centers and develops its own methods for allocating expenses.

(b) The hospital's medicare cost report. If an audit of the cost report is requested by the federal department of health and human services, the hospital shall submit the audited medicare cost report when available. In addition, the hospital shall submit a copy of its most recent medical assistance supplemental schedule.

(3) VOLUME. (a) Commencing in 1986, the actual volume of each charge element whose rate is established under s. HRSC 3.02 (2) for the fiscal year preceding the budget year under review, but not for the budget year under review. If the hospital does not have data to show the actual volume of these charge elements for the complete fiscal year preceding the

budget year under review, it may delay submitting information under this paragraph for up to 90 days in order to collect these data.

(b) 1. The information listed in subd. 2 for the budget year under review, the fiscal year preceding the budget year under review and, commencing in 1987, the 2nd fiscal year preceding the budget year under review. Information submitted for the 2nd fiscal year preceding the budget year under review shall consist of actual data, not best estimates. For each year, the information required under this paragraph shall be divided into separate categories for medicare patients, medical assistance patients, general relief patients and private pay patients.

2. a. The number of inpatient days and admissions, by service unit.

b. The number of outpatient occurrences.

NOTE: The Commission initially intends to use the definition of service unit and outpatient occurrences used by the Wisconsin Hospital Rate Review Program. The definition of service units for hospitals lists 12 categories: general adult medical/surgery, neonatal intensive care, mixed intensive care, intermediate acute care, general pediatric medical/surgery, orthopedic, obstetric, psychiatric, hospice, regular newborn nursery, alcohol/chemical dependency and rehabilitation.

(3g) CASE MIX. For the fiscal year preceding the budget year under review only, changes in the hospital's case mix.

(3r) INTENSITY. For the fiscal year preceding the budget year under review only, changes in the hospital's intensity.

(4) ACCOUNTS RECEIVABLE AND BAD DEBTS. The information concerning accounts receivable and bad debts required under s. HRSC 3.017 (2) (a).

NOTE: For further information about rules concerning credit and collection procedures, see the NOTES provided under ss. HRSC 3.017 (2) (a) and (c).

(5) CHARITY CARE. A proposal on how to fund the hospital's charity care, including a statement of the hospital's Hill-Burton obligations and level of allowance under 42 USC ss. 291 et seq. and its methods of meeting these obligations. The hospital shall also indicate its total charity

care level for its budget year under review and the fiscal year preceding its budget year under review and, commencing in 1987, the actual amount of charity care provided during the 2nd fiscal year preceding the budget year under review.

(6) EMPLOYEE COMPENSATION. The mean and total salary and fringe benefits, paid to or on behalf of each category of hospital employees established by the commission and the number of full-time employee equivalents in each category. If the number of full-time employee equivalents in any category is less than 3, the hospital may combine this category with another related category. The commission shall establish which categories are related to each other.

NOTE: The Commission will itemize those employee categories it is interested in with greater specificity on its forms. Some categories may not be related to any other categories. Initially, the Commission intends to use employee categories found on forms used by Medical Assistance and the Wisconsin Hospital Rate Review Program, with marginal changes as needed.

(7) COMMISSION-RESTRICTED FUNDS. The level of funds in each commission-restricted account, including prospective accumulations under s. 54.09 (1) (i), Stats.

(8) ASSETS, INVESTMENTS AND RESTRICTIONS ON FUNDS. A summary schedule of the hospital's cash, cash-equivalent assets and investments by type and a statement of the total value of these holdings. The hospital shall also submit a summary statement listing restrictions imposed by donors or creditors on the hospital's funds.

(9) COST CONTAINMENT METHODS. A summary of the methods it has used since it last submitted a rate request to reduce the growth of hospital costs. In its summary, the hospital shall specify whether its governing board has initiated any proposals or established any committees on the question of cost containment, what steps have been taken to implement cost

containment proposals and what results have been generated by these proposals.

(10) ACCREDITATION PROFILES OR MEDICARE HOSPITAL SURVEYS. A copy of the hospital's most recent annual medicare hospital survey, prepared by the department of health and social services or, if the hospital is accredited by the joint commission on accreditation of hospitals, the following information:

(a) The date of the joint commission's last survey.

(b) The effective dates of the accreditation.

(c) The following portions of the joint commission's most recent survey, unless the hospital submitted this information previously and no new survey has been conducted since that submission:

1. Governing body.

2. Management and administrative services.

3. Utilization review.

(11) CHANGES TO OWNERSHIP, PLANT OR ASSETS. A description of changes in the hospital's ownership and size during the fiscal year preceding the budget year under review, of the age and condition of the physical plant, of significant changes anticipated in these areas during the budget year and of projects undertaken during the hospital's preceding fiscal year that require approval under ch. 150, Stats. The hospital shall also include a statement updating the summary schedule of assets and accumulated depreciation it submitted under s. HRSC 2.15, a statement specifying the level of funded depreciation accumulated and a list identifying the price of each item of depreciable equipment that it purchased during the preceding fiscal year or plans to purchase during the budget year, if the purchase price exceeds $50,000. Component parts of equipment with purchase prices of less than $50,000 but that function with items of related

equipment that total more than $50,000 in price shall be reported as a single item of equipment. If 2 such component parts of equipment are purchased in consecutive years, the total purchase of $50,000 or more shall be reported in the 2nd year of purchase.

(12) STATEMENT OF REVENUES. A statement of revenues that categorizes operating revenues by inpatient routine services, inpatient ancillary services, outpatient services and other revenues.

(13) FINANCIAL STATEMENTS. (a) An income statement indicating the hospital's operations for the budget year under review, for the fiscal year preceding the budget year under review and for the current fiscal year to date.

NOTE: This rule requires submission of information about 2 different years, although it may appear otherwise on first reading. The rule requests information about the budget year under review and about the preceding fiscal year. The request for information about the current fiscal year to date will be the most recent income statement available for either the fiscal year preceding the budget year, if the hospital requests a rate increase before its budget year has commenced, or for the budget year itself if the hospital requests a rate increase some time during the budget year. This 3rd income statement will cover only a portion of the current fiscal year.

(b) A statement of changes in the hospital's fund balances for the year to date.

(c) A statement of changes in the hospital's financial position for the year to date.

(d) The hospital's most recent balance sheet.

(14) CAPITAL BUDGET. The hospital's total capital budget for the budget year. The hospital shall describe the inflationary assumptions used in preparing its capital budget and shall include a copy of the most recent capital budget report it has submitted to the department of health and social services, as required under s. 150.81, Stats.

(15) DEBT RETIREMENT SCHEDULE. The hospital's schedule for retiring all debts. The hospital is required to itemize in its debt retirement schedule each debt exceeding $10,000. Smaller debts may be summarized in a residual category.

(16) FOUNDATIONS; DONATIONS TO AND DEPOSITS BY THE HOSPITAL. (a) The level of funds the hospital received and signed over to or deposited in any foundation during the preceding fiscal year and the name and address of the foundation.

(b) The name and address of each corporate donor and foundation that provided funds exceeding $10,000 to the hospital during the preceding fiscal year, the level of funds provided and any restrictions imposed on use of the funds.

(17) CHARITABLE ORGANIZATIONS RELATED TO A HOSPITAL. (a) The information specified in par. (b) concerning related charitable organizations. In this subsection, a hospital is related to a foundation or other charitable organization if any of the following exist:

1. The hospital has authority to direct the activities, management and policies of the charitable organization.

2. One or more members of the hospital's governing board or one or more hospital officers has authority to direct use of the charitable organization's funds.

3. A majority of members on the charitable organization's governing board are also members of the hospital's governing board or are hospital officers.

4. An immediate family relationship, as defined in sub. (18), exists between a majority of members on the charitable organization's governing board and members of the hospital's governing board or hospital officers.

5. A parent organization has authority to appoint a majority of members of the hospital's governing board and of the charitable organization's governing board.

6. The purpose of the charitable organization is to provide funds for the hospital. The commission may use the charitable organization's bylaws, articles of incorporation or actual performance to determine the charitable organization's purpose.

7. The charitable organization solicits funds in the name of the hospital, with the express or implied approval of the hospital, substantially all of which the contributors intend or require to be provided to the hospital.

8. The hospital transfers resources to the charitable organization and substantially all of the charitable organization's resources are held for the benefit of the hospital.

9. The hospital assigns funds or revenue-producing activities to the charitable organization.

(b) If a hospital is related to a foundation or other charitable organization, the hospital shall clearly describe the nature of the relationship between the hospital and the charitable organization and shall either:

1. Combine its financial statements with those of the charitable organization; or

2. Disclose in notes to its financial statements information about the assets, liabilities, results of operations and changes in fund balances of the charitable organization.

NOTE: See s. HRSC 3.017 (9) concerning situations where assets and liabilities of a related charitable organization are imputed to the hospital.

(18) TRANSACTIONS BETWEEN RELATED ORGANIZATIONS. If any organizations are related to the hospital by common ownership or control, the amount paid for any services, facilities and supplies these organizations provide to the hospital or receive from the hospital. This subsection does not apply if the annual amount paid for all services, facilities and supplies provided to or received from an organization is less than $10,000. In order to include these costs as part of its financial requirements the hospital shall either establish that the costs were incurred as part of an arm's-length transaction with the organization or establish that the costs were otherwise reasonable. A hospital and an organization that provides or receives services, facilities or supplies are related by common ownership or control if any person with a significant ability to influence the hospital's choice of provider or receiver also has a financial interest in the organization. If an immediate family relationship exists between a person with a significant ability to influence the hospital's choice of provider or receiver and another person with a financial interest in an organization, common ownership or control is presumed to exist between the hospital and the organization. In this subsection, "immediate family relationship" includes any of the following relationships:

(a) Husband and wife.

(b) Natural parent and child.

(c) Adoptive parent and adopted child.

(d) Sibling.

(e) A relationship between any person and his or her stepparent, stepchild, stepsister or stepbrother.

(f) A relationship between any person and his or her father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law or brother-in-law.

(g) A relationship between any person and his or her grandparent or grandchild.

(20) PHILANTHROPIC FUNDS. The levels of philanthropic funds and other forms of community support that have been raised during the preceding fiscal year for operating purposes and for capital purposes.

(21) DISCOUNTS. (a) The total dollar value of each discount below normal charges the hospital gives to a nongovernmental payer.

(b) The savings generated by offering the discount under par. (a). The hospital shall document its statement under this paragraph by including with its annual report the following data:

1. The total savings generated by reducing the lapse of time involved in receiving payments, calculated as the savings generated by prepayment for services, immediate payment upon patient discharge and increased promptness of payments as compared with the average time of payment for that class of payers.

2. The total savings generated by improving administrative efficiencies, calculated as the savings generated by a reduction in staff or in data processing and accounting costs attributable to the reduced billing workload and the savings generated by reduced costs associated with admitting and discharging patients who are affected by the discount.

NOTE: The term "nongovernmental payer" in s. HRSC 2.17 (21) (a) includes an HMO that contracts at a discount for hospital services to be provided to its medicare, medical assistance or general relief beneficiaries. Note, however, that although hospitals must submit information concerning these discounted contracts the Commission will not apply its standard in s. HRSC 3.017 (6) (a) to these contracts unless the discount exceeds that customarily demanded by governmental fee-for-service reimbursement.

(22) UNFAIR LABOR PRACTICES. Information on amounts paid for services regulated under s. 111.18 (2), Stats.

NOTE: The Wisconsin Hospital Rate Review Program requires hospitals to submit information concerning amounts paid for certain

unfair labor practices that violate state or federal law. Section HRSC 2.17 (22) continues this requirement.

(23) PENALTIES. A statement of each fine, forfeiture, disallowance and penalty the hospital incurred during the preceding fiscal year whose value exceeds $5,000.

(24) INFORMATION CONCERNING EXISTING EDUCATION AND RESEARCH PROGRAMS. A description of all medical education, allied education and research programs the hospital is conducting. Each hospital shall separately report both direct and indirect costs of its existing graduate medical education, undergraduate medical education, allied education and research programs and the revenues supporting these programs.

NOTE: Section HRSC 2.17 (24) provides the Commission with information it will need in order to approve any hospital's education and research programs and to determine whether costs associated with these programs are reasonable and necessary. Section 54.09 (1) (c), Stats., requires the Commission to perform these functions. The Commission does not intend to review programs accredited by competent bodies that are presently in effect, but will use the information it collects as a data base for comparison with future education and research program proposals that hospitals submit to the Commission for its approval. Section HRSC 3.017 (3) implements the Commission's authority to approve these program proposals and calculate their reasonable and necessary costs.

(25) LITIGATION EXPENSES. A statement of all contingent liabilities that may significantly affect the hospital's financial requirements, including claims and litigation.

(26) GOVERNMENTAL PAYMENTS. The information required to estimate governmental payments, as specified in s. HRSC 3.05.

(27) OCCUPANCY RATES. Information concerning the hospital's approved beds and average daily census, as specified in s. HRSC 3.017 (4) (a) 1.

(28) OTHER FINANCIAL REQUIREMENTS. Other information concerning the financial requirements specified in s. 54.09.

HRSC 2.19 EXPEDITED REVIEW; ANNUAL REPORTS FOR SMALL HOSPITALS. (1) ELIGIBILITY. (a) Any hospital whose gross annual patient revenue during

the fiscal year preceding the budget year is less than $5,000,000 is not required to submit the data listed under s. HRSC 2.17. Instead, the hospital's required annual submission is limited to the information specified in sub. (2). Unless otherwise provided, all data submitted shall cover both the budget year and the preceding fiscal year. All data submitted shall be based either on actual data, if available, or on the hospital's best estimated data. For the budget year the hospital shall project its best estimated data from the results of the preceding fiscal year.

(b) The commission shall adjust the dollar amount specified in par. (a) annually to reflect changes in the hospital market basket index, based on the report specified in s. HRSC 3.09.

NOTE: The $5,000,000 threshold specified in s. HRSC 2.19 (1) refers to gross annual patient revenue generated by hospital patients--not, in situations where a hospital is combined with a nursing home, to revenue generated by nursing home residents.

(2) REDUCED DATA SUBMISSION. Except as provided in sub. (3), a hospital that meets the eligibility criterion specified in sub. (1) is required to submit only the following information annually:

(a) The hospital's gross annual patient revenue.

(b) The hospital's medicare cost report, audited medicare cost report and medical assistance supplemental schedule, as specified in s. HRSC 2.17 (2) (b).

(c) The hospital's volume and changes in case mix and intensity, as specified in ss. HRSC 2.17 (3) to (3r).

(d) Portions of the profile or survey required under s. HRSC 2.17 (10).

(e) A description of changes in the hospital's ownership during the fiscal year preceding the budget year under review.

(f) The financial statements listed in s. HRSC 2.17 (13).

(g) The information on transactions between related organizations required under s. HRSC 2.17 (18).

(gm) The information on discounts required under s. HRSC 2.17 (21), if the total dollar value of all discounts the hospital offers to its nongovernmental payers exceeds $10,000.

(h) Information on regulated services required under s. HRSC 2.17 (22).

(hm) Information on penalties required under s. HRSC 2.17 (23).

(i) Information concerning the hospital's approved beds and average daily census, as specified in s. HRSC 3.017 (4) (a) 1.

(j) The annual audited statements and internal control information specified in s. HRSC 2.21.

(3) ADDITIONAL SUBMISSION. After reviewing the data submitted under sub. (2), the commission may require the hospital to submit additional information it deems necessary to discharge its responsibilities.

HRSC 2.21 ANNUAL AUDITED FINANCIAL STATEMENTS REQUIRED FOR ALL HOSPITALS. (1) FINANCIAL STATEMENTS. Each hospital shall send to the commission a copy of the following annual audited statements, including the attached notes and auditor's opinion, no later than 45 days after it receives the statements:

(a) An income statement indicating the hospital's operations for the year.

(b) A statement of changes in the hospital's fund balances for the year.

(c) A statement of changes in the hospital's financial position for the year.

(d) The hospital's balance sheet for the last day of its fiscal year.

(2) ACCOMPANYING INTERNAL CONTROL INFORMATION. As part of its submission under sub. (1), each hospital shall also send to the commission a copy of any reports that disclose material weaknesses in internal control.

NOTE: The standards for requiring auditors to prepare these internal control reports are found in s. 323, "Required Communication of Material Weaknesses in Internal Accounting Control" of the Codification of Statements on Auditing Standards, American Institute of Certified Public Accountants.

CHAPTER HRSC 3

RATE SETTING

HRSC 3.01 SCHEDULE FOR ANNUAL RATE REQUESTS. (1) ANNUAL DATE. Each hospital may submit one rate request annually. The rate request may be submitted up to 90 days before a date specified by the commission or at any time during the 12 months following that date. In addition to the annual rate request authorized under this section, any hospital may submit an emergency rate request as provided in s. 54.17 (1m), Stats. Rate review commences on the date the hospital notifies the commission it is requesting a rate increase. If the commission schedules its own review of the hospital's rates, rate review commences on the date scheduled.

(2) FACTORS USED TO SET DATES. The commission shall establish the annual date for submitting requests by each hospital based on the hospital's fiscal year and gross annual patient revenue and on prudent allocation of the commission's resources. The commission shall establish its schedule of dates by order and shall provide this schedule to the public on request.

NOTE: Section 54.07 (1), Stats., requires the Commission to establish a schedule of dates when each hospital may submit its annual rate request. That statute also allows any hospital to submit an annual rate request after the scheduled date or up to 90 days before the scheduled date. If a hospital fails to request a rate change by its scheduled date, s. 54.07 (1), Stats., allows the Commission to conduct a review on its own initiative.

Statutory law instructs the Commission to keep the date it schedules for each hospital within 31 days of that hospital's

fiscal year. This instruction will be the primary criterion the Commission uses when it creates this schedule. Since the fiscal years of most hospitals cluster around June 30, September 30 and December 31, the Commission will also need to develop the schedule in a way that spreads out its workload for more efficient operation. The Commission will attempt to achieve this goal by segregating hospitals into groups according to gross annual patient revenue and uniformly spacing hospitals from each group throughout the scheduling period.

(3) HOSPITALS SUBJECT TO REGULATION. The commission shall, by order, list the hospitals subject to regulation under chs. HRSC 1 to 4 and shall provide this list to the public on request.

HRSC 3.013 NOTICE OF A RATE REQUEST. (1) FORMAT OF NOTICE. (a) Each notice a hospital is required to publish under s. 54.07 (2), Stats., shall include the following form, with all necessary information inserted:

NOTICE OF HOSPITAL RATE REQUEST

On (date) the (name and address of hospital) has submitted to the Wisconsin Hospital Rate-Setting Commission a request to modify the rates it charges for patient care.

The (name of hospital) estimates that these rate changes will increase its annual revenue by (specify dollar amount) over its previous fiscal year's budgeted annual revenue, a (specify percentage) annual increase, and has requested that this rate request take effect on (date).

Any person who wishes to present testimony before the Commission, appear at formal or informal hearings or otherwise support or oppose the hospital's rate request must first become an interested party to this review by notifying the Commission in writing no later than 30 days after the date this notice is published. A letter to the Commission at the following address indicating your interest in this rate request and your intent to become a party to the rate review is sufficient. Write to:

(insert address of commission)

(b) 1. The notice required under par. (a) shall include the rate change, if any, the hospital is requesting for each of 25 charge elements the commission specifies by inserting the following addition at the end of the notice's first paragraph:

"The following are 25 examples of rate changes being requested:

Service or charge	Existing rate	Requested rate"

(Specify each of the 25 charge elements for which a rate change is requested)

2. The 25 charge elements required under subd. 1 are those charge elements of the hospital that generate the greatest revenue per year. The commission may modify this list of 25 charge elements by order.

(c) Hospitals shall publish notices under this subsection in one or more newspapers likely to give notice to the hospital's patients and payers, such as a newspaper with a major concentration of circulation in the area surrounding the hospital. Each hospital shall also submit a copy of each notice it published to the commission and an affidavit of publication. If a hospital publishes a notice in more than one newspaper, the last date of publication commences the 30-day period in which persons may become parties to the rate review. If a hospital fails to publish this notice the commission is not required to continue reviewing the rate request.

NOTE: Section 54.07 (2), Stats., requires each hospital that submits its annual rate request to publish a notice within 10 days after the submission. The notice must inform the public of the review, summarize the rate sought and state the process by which interested persons may become parties to the review.

(2) SPECIAL NOTICE TO INTERESTED PERSONS. Any person who wishes to receive a notice of pending rate requests for any particular hospital may submit a letter to the commission indicating the name of each hospital in which the person is interested. If any person requests notice of pending

rate requests for more than one hospital the commission may require payment of a reasonable fee to defray the cost of delivery. The commission shall mail or deliver a notice that, to the extent practicable, is substantially similar to the notice required under sub. (1) to each interested person within 10 days after any of the following occurs:

(a) The hospital in which the person has expressed an interest submits a rate request.

(b) The hospital in which the person has expressed an interest requests the commission to issue an emergency order under sub. (3).

(c) The commission schedules its own review of the hospital's rates.

(3) NOTICE IN EMERGENCIES. (a) If a hospital requests the commission to issue an interim order because of an emergency under s. 54.17 (1m), Stats., the hospital shall publish the notice specified in sub. (1) within 10 days after submitting the request. This notice shall also describe the nature of the emergency involved.

(b) 1. Any person seeking to become a party to the commission's review of an emergency request shall notify the commission in writing within 10 days after the date the notice under sub. (1) is published; a hospital that submits an emergency request shall modify the notice it issues to indicate this deadline.

2. Notwithstanding subd. 1, any person seeking to become a party to the commission's review of an emergency request who receives a special notice under sub. (2) (b) shall notify the commission in writing within 10 days after the date of delivery.

HRSC 3.017 CALCULATING FINANCIAL REQUIREMENTS. (1) SEPARATING NURSING HOME FINANCIAL REQUIREMENTS. (a) If a hospital is jointly operated in connection with a nursing home the commission shall, to the extent practicable, exclude from its calculation of the hospital's financial

requirements those financial requirements generated by the nursing home. Either of the methods specified in pars. (b) and (c) may be used to calculate the financial requirements of a hospital that is part of a combined facility.

(b) Hospital financial requirements may be determined based on the combined facility's own separation of its nursing home and hospital financial requirements, if the facility's auditor attests on the most recently audited financial statements to the fact that the facility's method of allocating expenses and revenue between the nursing home and hospital is reasonable for management and rate-setting purposes. The commission is not required to use this method if it shows that the nursing home's expenses materially exceed its revenues.

(c) 1. If the commission rejects the method specified in par. (b) because the method shows that the nursing home's expenses materially exceed its revenues or because the method is unavailable, it may determine the financial requirements of a hospital that is jointly operated in connection with a nursing home as the lesser of the following:

a. The level of gross annual patient revenue a hospital requests for the budget year under review.

b. The commission's estimate of the combined facility's total financial requirements for the budget year under review minus the commission's estimate of the nursing home's budgeted gross annual patient revenue for the nursing home's ensuing fiscal year.

2. The commission is not required to use the formula specified in this paragraph if it would shift nursing home costs to the hospital excessively.

(2) ACCOUNTS RECEIVABLE AND BAD DEBTS. (a) Each medium-sized or large hospital shall, as part of the information it submits under s. HRSC 2.17:

1. Indicate whether it participates in any interim or advance payment program for medicare or other payers and indicate the year-end balance in the account for each program.

NOTE: Medicare presently uses a periodic interim payment program, a method by which hospitals can reduce delays in billing and standardize cash flow by receiving a portion of the total payment prior to complete processing of their bills.

2. Estimate what dollar amount of bad debts it can reasonably be expected to incur during the budget year. This estimate shall include the controls it will use to limit the dollar amount of bad debts and to collect accounts receivable.

3. Explain its method for determining when to write off an account receivable as a bad debt or charity care and its provision for bad debt and charity care during the budget year. Commencing in 1987, the hospital shall also submit the actual charges billed during the 2nd fiscal year preceding the budget year under review, the payment received from those charges and the average lapse of time involved in receiving payments from each of the 3 categories of payers that generate the hospital's greatest revenue. Each hospital shall calculate the time involved in receiving payments from these payers, calculated commencing with the date of discharge. The hospital shall also break down the payments received from each of these payers by indicating the following information:

a. The total dollar amount of that payer's accounts receivable.

b. That payer's percentage of total accounts receivable.

c. The total dollar amount of that payer's accounts receivable that are in-house, or unbilled; paid within 1 to 30 days; paid within 31 to 60 days; paid within 61 to 90 days; and paid over 90 days.

4. Indicate whether it identifies returning patients with delinquent accounts from prior services and what types of financial counseling or other procedures it provides patients.

(b) Each hospital, whether small, medium-sized or large, shall maintain a sound credit and collection procedure for reducing its accounts receivable and bad debts. The procedure shall include prompt processing of all bills to payers. Commencing in 1986, each hospital shall submit as part of its annual report filed under s. HRSC 2.17 or 2.19 the average lapse of time involved in mailing a bill to each of the 3 categories of payers that generate the hospital's greatest revenue. The time involved in mailing a bill begins with the date the patient is discharged. The commission may disallow as unreasonable any portion of a hospital's unrecovered costs under s. 54.09 (1) (e), Stats., if the commission finds that the hospital's credit and collection procedure does not effectively control these costs.

(c) After reviewing the hospital's estimate of bad debts, its credit and collection policy for the budget year under review and its historic data on accounts receivable and bad debts in comparison with other hospitals, the commission shall establish reasonable levels of budgeted revenue in accounts receivable and of bad debts for the hospital and include these amounts in its rate-setting order.

NOTE: Section 54.21 (2) (b) 1, Stats., requires the Commission to establish by rule appropriate levels of budgeted revenue in accounts receivable for hospitals. In addition, s. 54.09 (1) (e), Stats., authorizes the Commission to disapprove as a financial requirement debts that a hospital has failed to recover due to unsound credit and collection policies. This rule establishes a method for determining reasonable levels of budgeted revenue in accounts receivable and for establishing the soundness of each hospital's credit and collection policy.

(3) EDUCATION OR RESEARCH PROGRAM PROPOSALS. The commission may require any hospital to submit information describing medical education, allied education or research programs whose costs the hospital seeks to include in its financial requirements under s. 54.09 (1) (c), Stats. Unless the commission requires additional information, any hospital with a

program accredited by a competent body need only provide the commission with the accrediting body's name in order to include the costs of the program in its financial requirements. Hospitals shall describe each unaccredited program to the commission, including a definition of the program's purpose and a statement of the program's direct and indirect costs. The commission may disapprove part or all of any program that it finds is not directly related to patient care services, overly expensive, duplicative or otherwise unnecessary.

(4) EXCESS CAPACITY. (a) 1. The commission may disregard as a financial requirement costs associated with excess bed capacity of a hospital, as specified in par. (b). In order that the commission may determine a hospital's occupancy rate and its bed capacity level, each hospital shall include with its annual report filed under s. HRSC 2.17 or 2.19 a statement indicating the number of approved beds that the hospital reported to the department of health and social services as allocated to its medical/surgery unit, its pediatric unit, its obstetrics unit, its intensive care/critical care unit, its psychiatric unit and its alcohol and other drug abuse unit, if any, and the hospital's peak and average daily census in each of these units during the fiscal year preceding the budget year under review. The commission shall calculate the hospital's occupancy rate for each of these units and compare the actual rate with the occupancy standard specified in subd. 2.

2. The commission shall compare the hospital's actual occupancy rate for each of the units specified in subd. 1 against the occupancy standard established by the department of health and social services in its rules or its state medical facilities plan, created under s. 150.83, Stats.

(b) Any hospital whose actual occupancy rate falls below the occupancy standard specified in par. (a) 2 shall suggest alternate uses for

underused portions of the facility that are consistent with occupancy improvement plans the hospital is required to submit to the department of health and social services under ch. 150, Stats., and that will either produce sufficient revenue to pay some or all of the costs related to these underused portions, reduce hospital financial requirements or are otherwise reasonable. If the hospital does not suggest alternate uses it shall explain why such uses are not feasible. The commission may find the costs associated with the underused portions to be unreasonable and disregard these costs as financial requirements.

(c) If the commission finds that a hospital with an occupancy rate below the occupancy standard specified in par. (a) is a sole provider in its acute care service area, it may find part or all of the costs associated with the underused portions to be reasonable if the hospital's underused capacity is required to maintain a reasonable mix of services in the area. In this paragraph, "acute care service area" has the meaning specified by the department of health and social services in the rules it promulgates under s. 150.83, Stats.

NOTE: Section HRSC 3.017 (4) incorporates occupancy standards established by DHSS in its Wisconsin State Medical Facilities Plan for general acute care hospitals and short-term specialty hospitals. This rule also allows the Commission to provide special consideration for small, rural hospitals and other hospitals that are sole providers in their acute care service areas.

(5) PENALTY PAYMENTS. No hospital may include as a financial requirement any fine, forfeiture or other penalty whose value exceeds $5,000.

(6) DISCOUNTS. (a) If a hospital enters into a contract to provide health care services at a rate that is discounted below normal billed charges, the commission may include additional financial requirements for the hospital in its rate-setting deliberations only in order to prevent shifting the savings generated by the contract to other payers. These

additional financial requirements may not exceed the value of the savings generated by the contract and may only be included if the hospital demonstrates to the commission's satisfaction that the savings resulting from the contract equal or exceed the loss in revenue. The commission may not consider any loss of hospital revenue due to rate differentials under the discounted contract as justification for additional charges to other groups of patients.

(b) Paragraph (a) does not apply to charity care discounts offered by any hospital.

(c) Paragraph (a) does not apply to discounts required by medicare, medical assistance or general relief unless the governmental payer contracts with a health maintenance organization to provide service to its beneficiaries and the size of the discount exceeds the discount customarily demanded by governmental fee-for-service reimbursement. Paragraph (a) does apply to that portion of such a discount that exceeds the customary governmental fee-for-service discount.

(7) CAPITAL. (a) For the purpose of interpreting s. 54.09 (1) (i), Stats:

1. "Capitalized interest" means interest expenses incurred during construction of a capital asset that are added to the cost of the asset and depreciated over the useful life of the asset. "Capitalized interest" does not include interest costs that are recognized as operating expenses.

2. "Commitments for capital requirements" means expenditures that meet both of the following conditions:

a. The expenditure is budgeted, at the beginning of the hospital's fiscal year preceding the budget year under review, to be expended during the remaining portion of the fiscal year that has not yet occurred as of the date that rate review commences.

b. The hospital has a contractual obligation to pay for the budgeted expenditure.

3. "Debt retirement" means payments of principal on loans outstanding for plant or equipment.

(b) For the purposes of interpreting the restrictions on income assignment and on calculation of available funds under ss. 54.09 (1) (b) and (i) 1, Stats., donor-restricted or income-assigned donations do not include donations to a hospital on which the hospital imposes its own restrictions or assignments.

(c) In lieu of creating a separate 3-year capital expenditure plan for submission under s. 54.09 (1) (i) 1, Stats., any hospital may submit to the commission a copy of its most recent proposed 5-year capital budget report required under s. 150.81, Stats.

NOTE: The capital expenditure review program of DHSS (formerly, the certificate of need program) requires that hospitals annually submit a 5-year proposed capital budget report. The Commission will accept this report as sufficient to meet one of the conditions necessary for approval of prospective accumulations that finance future capital projects.

(8) ENERGY COSTS. The commission may determine any portion of a hospital's energy costs to be unnecessary if the commission required, in a previous rate-setting order, that the hospital be audited by an independent energy auditor but the hospital failed to comply with this requirement.

(9) RELATED CHARITABLE ORGANIZATIONS. (a) The commission may impute to a hospital the assets and liabilities of a foundation or other charitable organization that is related to the hospital under:

1. The criteria specified in s. HRSC 2.17 (17) (a) 1.

2. The criteria specified in s. HRSC 2.17 (17) (a) 2.

3. The criteria specified both in s. HRSC 2.17 (17) (a) 5 and in either s. HRSC 2.17 (17) (a) 3 or 4.

(b) Under this subsection the commission may apply the income from unrestricted donations to offset interest expenses, as provided in s. 54.09 (2), Stats., or to offset the cost of capital purchases proposed during the budget year under review. The commission may not apply the corpus of an unrestricted donation to offset interest expenses or the cost of proposed capital purchases and may only use donor-restricted gifts for the purposes specified by the donor. If a hospital has signed over to a foundation any donations that were not donor-restricted the commission may, regardless of whether the hospital is related to the foundation, also apply the income the hospital would reasonably have been capable of earning from those funds to offset interest expenses or the cost of capital purchases proposed for the budget year under review.

(10) CONDITIONS IMPOSED. In its rate review deliberations the commission may, by order, apply any conditions consistent with chs. HRSC 1 to 4 that were imposed by the Wisconsin hospital rate review program as part of a hospital's rate and that remain in effect on or after February 1, 1985, and may establish additional conditions pursuant to s. 54.17 (4) (f), Stats.

(11) EMPLOYEE COMPENSATION. When the commission calculates a hospital's operating expenses it shall examine increased payroll costs of nonsupervisory employees, including increases due to collective bargaining, increases that correct for past lags in compensation or increases that correct for past discrimination, even when the resultant costs exceed levels the commission would otherwise apply.

HRSC 3.02 RATES. (1) TOTAL BUDGET. The commission shall establish a total budget for each hospital. The total budget shall consist of the gross patient revenue and net patient revenue the hospital may generate during the budget year under review.

(2) RATES FOR CERTAIN CHARGE ELEMENTS. (a) The commission shall list 100 charge elements whose rates must be submitted by each hospital for its approval. After the commission sets a hospital's total budget under sub. (1), the hospital shall submit to the commission its proposed rate for each of these charge elements.

(b) A hospital that does not bill its payers for a charge element listed by the commission under par. (a) is not required to create a rate for that charge element and submit the rate to the commission for approval. If a hospital charges a rate for a charge element that is reasonably similar but not identical to a charge element listed by the commission, the hospital shall submit the information required for that charge element under par. (a) to the commission but shall note the difference between its charge element and the listed charge element.

(c) If the commission finds that the hospital's rates proposed in par. (a) will generate annual patient revenue that does not exceed the amount authorized under sub. (1) it shall approve these rates.

(3) RATE OVERCHARGES. No hospital may charge rates for the charge elements specified in sub. (2) that exceed the rates the commission approved for those charge elements. Any hospital may adjust its rates for these charge elements if it notifies the commission prior to implementing the rate change. The commission may disallow a rate change that it finds will generate annual patient revenue exceeding the amount authorized under sub. (1).

HRSC 3.025 APPROVAL OF RATE INCREASES FOR EXEMPT HOSPITALS. (1) CRITERIA FOR EXEMPTION. Any hospital that meets all of the following criteria is eligible for exemption under s. 54.21 (2), Stats:

(a) The hospital's gross annual patient revenue for the fiscal year preceding the budget year under review is within 3% of its budgeted gross annual revenue for that year.

(b) The commission determines that the gross annual revenue established for the budget year under review exceeds the amount budgeted for the fiscal year preceding the budget year under review by a rate that is within the limits specified in s. 54.21 (2) (a), Stats.

(c) The hospital meets the criteria specified in s. 54.21 (2) (b), Stats.

(2) APPROVED BUDGETED REVENUE IN ACCOUNTS RECEIVABLE. The commission shall set a reasonable level of budgeted revenue in accounts receivable for use in determining if a hospital is eligible for approval of its rate request under s. 54.21 (2) (b) 1, Stats., using the method specified in s. HRSC 3.017 (2).

(3) STAFFING RATIOS. The commission shall use the peer group average staffing ratio in determining if a hospital is eligible for approval of its rate request under s. 54.21 (2) (b) 3, Stats.

NOTE: Sections 54.21 (2) (b) 1 and 3, Stats., require the Commission to adopt rules that set limits on each hospital's budgeted revenue in accounts receivable and on budgeted staffing ratios. Sections HRSC 3.025 (2) and (3) respond to that requirement.

HRSC 3.03 DISALLOWANCES DUE TO EXCESS REVENUE. (1) CALCULATING THE DISALLOWANCE. The commission may determine if a hospital is subject to a disallowance because the hospital's patient revenue exceeds its budgeted patient revenue by more than the amount authorized under s. 54.13 (1) (b), Stats., by determining the extent that the hospital's net patient revenue for the fiscal year preceding the budget year under review exceeds the hospital's budgeted net patient revenue for that year.

(2) ADJUSTING THE DISALLOWANCE. Any hospital may petition the commission to determine the relative percentages of the hospital's fixed costs and variable costs. Any hospital seeking a determination that its variable costs exceed 65% of its total costs shall submit to the commission all relevant information based on available data. If the commission finds that a hospital subject to the disallowance specified in s. 54.13 (1) (b), Stats., has variable costs exceeding 65% of its total costs, the commission shall reduce the disallowance percentage using the following formula:

Variable cost % - 65% = V%

40% - V% = Disallowance percentage to be used in s. 54.13 (1) (b), Stats.

HRSC 3.04 UNFAIR LABOR PRACTICES. If a hospital has committed any of the unfair labor practices or prohibited practices regulated under s. 111.18, Stats., the commission shall disallow from the hospital's financial requirements payments to persons for the activity that constituted the unfair labor practice.

NOTE: Section 111.18, Stats., regulates certain unfair labor practices and prohibited practices, if those practices include payment to any person for services rendered with respect to concerted activity engaged in by the hospital's employees for purposes of collective bargaining.

HRSC 3.05 ESTIMATING GOVERNMENTAL PAYMENTS. (1) ACCEPTABLE METHODS. Acceptable methods that hospitals may use to estimate annual medicare, medical assistance or general relief payments under s. 54.17 (1) (a), Stats., are:

(a) A hospital may estimate its annual medicare payment for the budget year under review by using either of the following methods:

1. Submitting to the commission its total medicare charges and record of reimbursement for the most recent fiscal year in which final reim-

bursement adjustments have been made and adjusting this reimbursement level by an inflation factor.

2. Submitting to the commission a schedule showing its year-to-date charges and its diagnosis-related group reimbursement for the fiscal year preceding the budget year under review, as well as the level of reimbursement for capital costs, outpatient services and medical education for that year, projected to the end of that fiscal year and adjusting this reimbursement level by an inflation factor. If the hospital expects a change in its reimbursement rates, volume or case mix during the budget year under review it shall document the reasons for this expectation.

(b) A hospital may estimate its annual medical assistance payment for the budget year under review by using either of the following methods:

1. Submitting to the commission a copy of the interim rate calculation workpapers of the department of health and social services to indicate the medical assistance inpatient and outpatient reimbursement levels.

2. Submitting to the commission its total medical assistance charges and record of reimbursement for the most recent fiscal year in which final reimbursement adjustments have been made and adjusting this reimbursement level by an inflation factor.

(c) A hospital may estimate its annual general relief payment by submitting a record of payments received during the fiscal year preceding the budget year under review and adjusting this amount by an inflation factor.

(2) RETROSPECTIVE ADJUSTMENTS. The commission shall increase or decrease the estimate of medicare or medical assistance payments used in its rate-setting order by an amount not to exceed the hospital's contractual allowance variance during the fiscal year preceding the budget year

under review. The contractual allowance variance equals the difference between the estimated payment and the sum of the interim payments plus any retrospective adjustments.

NOTE: Section 54.17 (1) (a), Stats., requires the Commission to promulgate a rule that establishes acceptable methods a hospital may use to estimate its annual medicare, medical assistance and general relief payments. The rule in s. HRSC 3.05 creates these methods.

The rule includes a method of modifying estimates when a hospital's estimate of government payments for services varies from the actual amount received. This portion of the rule avoids situations where a hospital could be reimbursed twice for its costs when the government contractual allowance is underestimated and avoids situations where a hospital is inadequately reimbursed when the government contractual allowance is overestimated.

HRSC 3.07 INCENTIVES. (1) INTENSITY AND CASE MIX. If the budgeted financial requirements of a hospital that are payable by the hospital's private pay patients increase by less than 1% over the budgeted financial requirements payable by private pay patients for the preceding fiscal year, after adjusting for inflation, working capital fluctuations, changes in the volume of private pay patients and changes in the level of expenses charged to government payers that are unreimbursed, the commission may allow the hospital to include a financial incentive under s. 54.09 (1) (k), Stats. This financial incentive, available only during the budget year under review, may not exceed the amount necessary to allow these adjusted financial requirements to increase by 1%.

NOTE: This incentive offers hospitals a 1% intensity and new technology increase. If, after adjusting a hospital's financial requirements for increases that are due to inflation, working capital fluctuations, volume and government shortfalls, the financial requirements payable by private pay patients have increased by less than 1% the hospital is eligible for an incentive. The Commission will then allow the hospital's financial requirements to rise by up to 1% over the financial requirements of the preceding fiscal year.

(2) PLANT DEPRECIATION. The commission may grant an additional financial incentive to any hospital, not to exceed its plant depreciation

on a historical cost basis, if the hospital meets both of the following criteria:

(a) The hospital requests a percentage increase in annual revenue over its previous fiscal year's budgeted annual revenue that is less than or equal to the 12-month percentage increase in the hospital market basket index most recently calculated under s. HRSC 3.09. The amount of any plant depreciation incentive authorized under this subsection may not be so large as to increase the hospital's annual revenue for the budget year under review above the 12-month percentage increase in the hospital market basket index most recently calculated under s. HRSC 3.09. The amount of any plant depreciation incentive received under this subsection during the hospital's previous fiscal year shall be subtracted from its previous fiscal year's budgeted annual revenue for the purpose of completing the calculation under this paragraph.

NOTE: The first screen of the plant depreciation incentive compares a hospital's budget-to-budget percentage increase in revenue with the most recent 12-month percentage increase in the hospital market basket index.

(b) The hospital's adjusted average charge per admission for all patients during the year preceding the budget year under review is below the 25th percentile of charges used by the hospital's peer group. The commission shall make the following adjustments to determine eligibility of any hospital under this paragraph:

1. The commission shall determine the average salary per full time employee equivalent for the hospital's peer group and use the average salary, not the hospital's actual salaries, when calculating the hospital's adjusted average charge per admission.

2. The commission shall index the adjusted average charge per admission for all hospitals to a single date, allowing for inflationary increases in each hospital's charges in order to compare equitably the

charges set early in the year for some hospitals with the charges set later in the year for other hospitals.

(c) Any hospital that receives a financial incentive under this subsection shall separately account for the amounts received.

(3) PERFORMANCE AND MANAGEMENT AUDITS. If the commission finds that the period since an independent management or performance audit has occurred at a hospital is unreasonably long, it may suggest that such an audit be conducted at the hospital. The hospital may submit cost-saving proposals derived from any management or performance audit to the commission; if the proposal does reduce a hospital's costs, the commission may grant an additional financial requirement to the hospital for the budget year following the year the proposal is implemented in the form of an incentive. This financial requirement applies only to the budget year under review and may not exceed 50% of the first year's cost reduction.

NOTE: A hospital's reasonable costs related to conducting an audit under the performance and management audit incentive will be considered necessary operating expenses and included in the hospital's financial requirements. The performance and management audit incentive is designed to encourage audits at hospitals that have no workable cost containment methods to submit under s. HRSC 2.17 (9).

HRSC 3.09 TREND FACTORS. (1) QUARTERLY COMPUTATION OF THE MARKET BASKET INDEX. Commission staff shall calculate the hospital market basket index quarterly for the purposes required under s. 54.21 (2) (a), Stats., and issue a report indicating the current level of the index.

(2) ANNUAL ADJUSTMENT. The commission shall annually use the hospital market basket index calculated under sub. (1) to adjust the revenue limits specified in s. HRSC 2.19 (1) and in ss. 54.13 (1) (b) and 54.21 (2) (a) 1, Stats., commencing its first adjustment on July 1, 1984.

NOTE: Section 54.21 (2) (a) 2, Stats., requires the Commission to use the same hospital market basket index used by the Wisconsin Hospital Rate Review Program to calculate hospital rates. This index is published quarterly in the periodical "Health Care Costs"

by Data Resources, Inc., 1750 K St., NW, Suite 300, Washington, D.C. 20006. Commission staff will use this index for its reports.

HRSC 3.11 ADJUSTMENTS FOR PARTIAL-YEAR RATE INCREASES. A hospital may adjust a rate increase that commences between the 2nd and 7th months of its fiscal year, as provided in s. 54.17 (1) (d) 3, Stats., only if the hospital has requested a rate review on or before its scheduled date for review. In this section, a rate increase commences between the 2nd and 7th months of a hospital's fiscal year if the commission issues its rate order on or after the first day of the 2nd month and on or before the last day of the 7th month of the fiscal year.

HRSC 3.13 CHARGE ELEMENTS. For the purpose of listing the 25 most heavily used charge elements under s. 54.07 (5), Stats., the commission may, by order, determine use according to the total annual patient revenue that all hospitals generate with any charge element, according to the volume of care associated with a charge element for all hospitals or according to other criteria the commission establishes.

NOTE: Section 54.07 (5), Stats., requires the commission regularly to publish a list of the 25 most heavily used charge elements for hospitals.

CHAPTER 4

HEARINGS AND PRACTICE

HRSC 4.01 DEFINITIONS. (1) INITIATING PARTIES. For the purpose of describing parties to the commission's proceedings:

(a) "Applicant" means a hospital that submits an application for a rate change.

(b) "Complainant" means a person who submits a complaint to the commission under s. HRSC 4.05.

(c) "Petitioner" means a person who petitions the commission to commence a rate review under s. HRSC 4.05.

(2) RESPONDING PARTIES. For the purpose of describing parties to the commission's proceedings:

(a) "Objector" means a party to a review under s. 54.07 (2), Stats., who objects to a hospital's application for a rate change.

(b) "Respondent" means a hospital that is the subject of a petition or complaint under s. HRSC 4.05.

(c) "Supporter" means a party to a review under s. 54.07 (2), Stats., who supports a hospital's application for a rate change.

HRSC 4.03 FORM OF APPLICATIONS AND REQUESTS TO COMMENCE A RATE REVIEW. Each application for a rate change or request to commence a rate review shall be submitted by the applicant or petitioner in triplicate form. Each application or request shall be in writing, stating its object, including a concise statement of the facts supporting this object and using the format specified in s. HRSC 1.09 (2). The chief executive officer of an applicant, the petitioner or that person's agent shall sign the form.

HRSC 4.05 OTHER REQUESTS TO INVESTIGATE COMPLAINTS OR COMMENCE RATE REVIEW. (1) COMPLAINTS. (a) Any person may request the commission to investigate a complaint. The commission may handle complaints informally under par. (b) or formally under par. (c).

(b) The commission may investigate complaints on its own or may handle complaints using other informal methods such as correspondence, referral to other regulatory agencies or dealing with the complaint at a rate review.

(c) 1. To initiate a formal hearing, the commission shall require the complainant to submit a petition stating specific facts of which the person has personal knowledge and other facts available by information and belief that show good cause to review or investigate the matter. The

complainant shall sign an oath stating that the information provided is true to the best of his or her knowledge, under the seal of a notary public. The commission may conduct a formal hearing regardless of whether it initiates the informal process under par. (b).

2. The commission may commence a formal hearing if it decides that the complaint concerns a substantial problem it is capable of resolving in any of the following areas:

a. Determining whether a hospital has misstated any material fact at a prior rate-setting proceeding and whether, under s. 54.17 (4) (b), Stats., the commission should reduce rates it has established.

b. Determining whether a hospital has charged any payer an amount exceeding the rates established under s. 146.60 or ch. 54, Stats., or has violated any order of the commission.

c. Determining whether a hospital has failed to reimburse a payer for a service determined medically unnecessary or inappropriate, in violation of s. 54.25 (2), Stats.

(2) COMMENCING RATE REVIEW. Any person may request the commission to review a hospital's rates on its own initiative under s. 54.07 (1), Stats. To initiate such a review, the person shall submit to the commission a petition stating specific facts of which the person has personal knowledge and other facts available by information and belief that show good cause to review the matter. The petitioner shall sign an oath stating that the information provided is true to the best of his or her knowledge, under the seal of a notary public. If the petition concerns a substantial problem that the commission is capable of resolving it may respond by conducting a hearing under sub. (3) or by commencing a rate review.

(3) PROCEDURE FOR CONDUCTING HEARINGS. Within 5 days after receiving a petition under sub. (1) or (2) the commission shall forward a copy to

the concerned hospital. If the commission decides to hold a hearing concerning a complaint filed under sub. (1) or concerning the merits of a request to commence rate review under sub. (2) it may schedule the time and place for a hearing. The chairperson of the commission shall designate one or more commissioners or a hearing examiner to preside at the hearing. The commission shall give the respondent hospital and all other interested parties at least 10 days' notice of the scheduled time and place for the hearing. The commission staff, complainant or petitioner and the respondent may present testimony at the hearing; the presiding officer may also allow other parties to present testimony.

HRSC 4.06 TRADE SECRETS. (1) INITIAL REQUEST FOR PROTECTION. Any party may request that public access to information it submits to the commission be withheld by requesting trade secret protection simultaneously with its submission of information. In its request the party shall specify that portion of a document or other information in need of protection and shall explain why the information needs protection. Upon receiving such a request, the commission shall segregate the information in a separate file that is not open to other parties or the general public. The commission shall include in the file where that information would otherwise be stored a statement identifying the general subject matter of the information being protected and indicating that, on the request of any person interested in inspecting the information, the commission will hold a meeting under sub. (2) to determine if the information constitutes a trade secret and requires continued protection or if the information should be disclosed. If the protected information was submitted as part of a rate review and, prior to the date when the opportunity to request a settlement conference expires, a party to the review requests a meeting under sub. (2), the commission shall hold the

meeting before it issues an order setting the hospital's rates or conducts a hearing on the rate review. If a party to the review submits the request for a meeting under sub. (2) on or after the date when the opportunity to request a settlement conference expires, or if a person who is not a party to the review submits a request for a meeting, the commission is not required to conduct the meeting before issuing a rate-setting order. At this meeting and at any hearing held under sub. (3) the presiding officer may impose conditions on inspection or otherwise protect the information under consideration.

(2) INITIAL MEETING. At a meeting scheduled under sub. (1) the commission shall consider the need for trade secret protection and whether to refer the issue to a public hearing. The commission may decide the question of trade secret protection at the meeting or, if it needs to hear testimony or receive evidence on the request, may defer action until it conducts a hearing. Unless the commission schedules a hearing under sub. (3) within 5 days after concluding this meeting, its decision at the meeting is a final decision.

(3) HEARING. Any hearing concerning the need for trade secret protection shall be conducted as a Class 1 contested case proceeding under ch. 227, Stats., subject to the limitation that the commission may waive requirements pertaining to Class 1 contested case proceedings if necessary to complete the hearing within the maximum time periods specified in s. HRSC 4.21 (2). The chairperson of the commission shall designate one or more commissioners or a hearing examiner to preside at the hearing. Unless the commission decides to review a presiding officer's decision within 5 days after its issuance, this decision is a final decision of the commission.

(4) NOTICE. In its notice of proceedings issued under s. HRSC 4.08 the commission shall identify the general subject matter involved at an initial meeting or hearing under sub. (2) or (3), without compromising the confidentiality of the information concerned, in order to solicit specific comments about matters such as:

(a) The extent that the information is known by employees of the requester or by outsiders.

(b) The extent that measures have been taken to guard the information's secrecy.

(c) The value of the information to its owner and to competitors.

(d) The effort expended in developing the information.

(e) The ease with which others could duplicate or acquire the information.

(f) The likelihood that the information would be created in the normal course of business even without trade secret protection.

(g) The public interest in revealing or not revealing this information.

(5) BURDEN OF PROOF. The person requesting trade secret protection has the burden of establishing the need to withhold public access under s. 19.36 (5), Stats., on the grounds that the information involved is a trade secret.

(6) INTERIM CONFIDENTIAL STATUS. If the commission reaches a final decision to reveal information for which protection is requested under this section, it shall withhold public access for an additional 5 days in order to allow potentially aggrieved parties to seek judicial review under s. 227.15, Stats.

NOTE: Current law defining a trade secret, as outlined by the Wisconsin Supreme Court in Wisconsin Electric Power Co. v. PSC, 110 Wis. 2d 530 (1982), State ex rel. Youmans v. Owens, 28 Wis. 2d 672 (1965) and Carroon and Black-Rutters v. Hosch, 109 Wis. 2d 290

(1982), relies on factors listed in Restatement, 4 Torts s. 757, comment b. This rule creates a procedure the Commission can use to protect some types of business information of a hospital or other party to a rate review. On request, the Commission will determine if the protected information fits within the factors defining a trade secret, so that the information should be considered a trade secret and be permanently withheld from public inspection. For example, a hospital may request the Commission to protect information about its current HMO or PPO discount so it will not be open to the public under the public records law, ss. 19.35 and 19.36, Stats. The procedure is intended to be completed within the strict time constraints for reviewing rates that are specified by statute.

HRSC 4.07 COPIES OF RECORDS. (1) COPIES ISSUED TO PARTIES. At the time it issues an order, the commission shall provide each party or counsel to the party involved with a certified copy of the order without charge.

(2) COPIES AVAILABLE TO OTHERS. Except as provided in sub. (1) and s. 54.15 (5), Stats., the commission shall provide copies of transcripts or other records on request if the requester pays an amount determined by the commission.

NOTE: Section 54.15 (5), Stats., requires the Commission to keep a complete record of its informal and formal hearings and investigations. That statute instructs the Commission to provide transcribed copies of formal hearings or investigations to parties for free but allows the Commission to charge parties at informal hearings or investigations who request transcriptions.

HRSC 4.08 NOTICE OF PROCEEDINGS. The commission shall provide notice to the public of its proceedings, including any general meeting, settlement conference, informal hearing or formal hearing under s. 54.15 (1), (3) or (4), Stats., or any meeting or hearing to review a request for trade secret protection under s. HRSC 4.06, by posting the following week's agenda every Wednesday in its office. The commission shall also notify each interested person under s. HRSC 3.013 (2) of a pending settlement conference, informal hearing, formal hearing or meeting or hearing concerning trade secret protection under s. HRSC 4.06. Each of these proceedings is a public meeting under ss. 19.81 to 19.98, Stats. The

commission may waive the notice provisions of this section if it finds that an emergency necessitates such action.

HRSC 4.09 CONDUCTING SETTLEMENT CONFERENCES AND HEARINGS. (1) SCHEDULE, LOCATION. The commission shall establish a schedule for settlement conferences, informal hearings and formal hearings. These proceedings shall be conducted at the commission's offices unless the commission designates a different location.

(2) PARTICIPATION IN SETTLEMENT CONFERENCES. A hospital may request a settlement conference before the commission to contest any part of commission staff rate recommendations under s. 54.13 (2), Stats. Any hospital seeking to initiate a settlement conference shall submit the request to the commission within 10 days after the rate recommendations are submitted. If any party submits any written material to the commission in support of its position at a settlement conference it shall simultaneously transmit a copy of the material to every other party to the rate review.

(3) OPENING A HEARING. (a) At informal or formal hearings under s. 54.15 (3) or (4), Stats., the presiding officer shall open the hearing and make a concise statement of its scope and purposes. Appearances shall be entered on the record and parties may then make motions and opening statements in accordance with the practice in state circuit courts. Opening statements shall be confined to a brief summary of the evidence to be offered and a statement of the ultimate legal points relied upon.

(b) At either informal or formal hearings parties may make statements off the record with the permission of the presiding officer. Any pertinent statements made off the record may be summarized by the presiding officer on the record. Arguments on objections to the receipt of evidence

or motions to strike need not be recorded, although the legal reasons for the objection or motion shall be recorded.

(c) The presiding officer at an informal or formal hearing shall call a recess for about 10 minutes at approximately the end of each hour of hearing.

(4) CONTEMPT. Contemptuous conduct at any proceeding of the commission is grounds for exclusion from the proceeding.

(5) CONSOLIDATION OF PROCEEDINGS. The commission may consolidate hearings or other proceedings that concern related questions of law and fact, subject to the limitation that it shall determine the rates of each hospital independently.

NOTE: Section 54.17 (2), Stats., requires the Commission to determine each hospital's rates independently.

(6) CONTESTED CASE HEARINGS. If an informal or formal hearing has been scheduled, is being held or has been held, the points of disagreement between the hospital, parties to the review and the commission that are unresolved at a settlement conference constitute the subject matter of that hearing and may not be the subject of a contested case hearing under s. 54.15 (6), Stats.

NOTE: Section 54.15 (6) (a), Stats., allows aggrieved parties to challenge any act or omission of the Commission by requesting a contested case hearing under s. 227.064, Stats. Section 54.15 (6) (b), Stats., however, specifies that aggrieved parties may not request a contested case hearing pertaining to the subject matter of an informal or formal hearing. Section HRSC 4.09 (6) interprets the phrase "pertaining to the subject matter of a hearing".

HRSC 4.11 APPEARANCES. (1) APPEARANCES BY PARTIES. Any party to a rate review seeking to participate in a settlement conference or hearing and any complainant, petitioner or respondent seeking to participate in an investigation under s. HRSC 4.05 shall either:

(a) Appear in person, giving his or her name and address and that of any person he or she represents and explaining the capacity in which he or she is representing that person; or

(b) File a notice of participation with all parties prior to the commencement of the proceeding that contains the information required under par. (a).

NOTE: As required in ss. 19.35 and 19.36, Stats., the open records statutes, the Commission will provide participants in its proceedings with a list of other parties on request.

(2) APPEARANCES BY STAFF. Members of the commission staff may participate in any settlement conference, hearing or other proceeding in an advisory role to discover and, if necessary, present information pertinent to the issues under consideration. Participation by staff does not constitute an appearance in support of or opposition to the position of any party and does not constitute the assumption of an adversarial role as a party to the proceeding.

HRSC 4.13 WITNESSES. (1) POWER TO SUBPOENA WITNESSES. The presiding officer at a settlement conference or hearing may issue subpoenas to compel the attendance of witnesses at the proceeding or at discovery proceedings, either on the presiding officer's own motion or at the request of a party to the proceeding. Witnesses who are subpoenaed may, prior to the time specified for compliance or within 10 days after service of the subpoena, whichever occurs first, request that the presiding officer or the commission quash or modify the subpoena. Each request to quash or modify a subpoena shall be accompanied by a brief statement in support of the witness's position.

(2) REIMBURSEMENT FOR APPEARANCE. (a) Witnesses who are subpoenaed on the presiding officer's own motion are eligible for a reimbursement of fees and mileage to the extent authorized under s. 814.67 (1) (a) and (c)

and (2), Stats. Witnesses who are subpoenaed at the request of any other party are eligible for this reimbursement by the state only if the presiding officer finds the testimony presented to be significant to the proceeding.

(b) Witnesses eligible for reimbursement under par. (a) may obtain voucher blanks from the presiding officer or from the commission's secretary.

(3) REPETITIVE EVIDENCE. The presiding officer at a hearing may limit the introduction of evidence, the number of witnesses who appear and the length of arguments and testimony in order to exclude immaterial, irrelevant or unduly repetitious testimony.

NOTE: Section 227.08 (1), Stats., requires the exclusion of immaterial, irrelevant or unduly repetitious testimony at contested case hearings. This rule also allows the Commission to limit the accumulation of such unnecessary evidence at other Commission proceedings.

HRSC 4.15 PRESERVING TESTIMONY AND DISCOVERY OF EVIDENCE. Commission staff or any party to a formal hearing under s. 54.15 (4), Stats., or to a contested case hearing under s. 54.15 (6), Stats., may preserve testimony and obtain discovery as provided in ch. 804, Stats. Preservation of testimony and discovery at a formal hearing may only occur during the 25-day period following the date the hospital requests a formal hearing.

NOTE: Under s. 227.08 (7), Stats., state agencies that conduct contested case hearings may allow all parties to preserve testimony and obtain discovery. This rule grants these powers to all parties to a contested case hearing but, since s. 54.15 (4), Stats., limits these activities for Commission staff and for hospitals to a 25-day period following the date the hospital requests a formal hearing, the rule imposes a similar restriction for all other parties to a formal hearing.

HRSC 4.17 BRIEFS AND ORAL ARGUMENTS AT HEARINGS. (1) FILING BRIEFS. Any party to a formal or informal hearing may file a brief pertaining to the hearing, if the party submits 5 copies of the brief to the commission and submits a copy to each party to the rate review. The party who files

a brief shall also inform the commission when and upon whom these copies were served. Briefs that summarize evidence or facts shall refer to specific pages of the record containing the evidence or facts.

(2) ORAL ARGUMENTS. (a) The presiding officer at any informal hearing may allow parties to the hearing to present oral arguments.

(b) 1. a. If a hearing examiner conducts a formal hearing he or she may allow parties to the hearing to present oral arguments.

b. Any party who is adversely affected by a hearing examiner's proposed decision at a formal hearing may present oral arguments before the commission concerning his or her objections to the proposed decision. If a hospital requests oral arguments before the commission under subd. 1. c, other parties may broaden the scope of their arguments to address issues other than their objections to the proposed decision.

c. The hospital that requested the formal hearing may present oral arguments before the commission concerning a hearing examiner's proposed decision.

2. If the commission conducts a formal hearing itself, the hospital that requested the hearing may present oral arguments before the commission during the hearing. If a hospital requests oral arguments, other parties to the formal hearing may also present oral arguments.

HRSC 4.19 CHANGING THE TIME OR PLACE OF A PROCEEDING; ADJOURNMENTS. The presiding officer of a settlement conference or hearing may change the time or place established for the proceeding as needed. Persons who request such a change shall deliver a copy of their request to all other parties to the proceeding and shall inform the presiding officer when and upon whom these copies were served. After a settlement conference or hearing commences, adjournment is at the discretion of the presiding officer.

HRSC 4.21 CONCLUDING A SETTLEMENT CONFERENCE OR HEARING. (1) CLOSING AFTER SUBMISSION OF EVIDENCE. A settlement conference or hearing is closed after submission of all evidence and after any period fixed for filing briefs or presenting oral arguments has expired. Subject to the maximum time periods specified in sub. (2), the presiding officer may reopen a settlement conference or hearing, extend the time period for filing briefs or presenting oral arguments if good cause is shown or, with the stipulation of all parties, allow additional documentary evidence to be submitted after the settlement conference or hearing is closed.

(2) MAXIMUM TIME PERIODS FOR PROCEEDINGS. (a) The presiding officer shall complete each settlement conference no later than 20 days after the date a hospital requests the conference. The commission shall issue its order no later than 15 days after it determines the hospital will not seek a hearing following the completion of the settlement conference.

(b) The presiding officer shall complete each informal hearing and the commission shall issue its order no later than 50 days after the date a hospital requests the hearing.

(c) The presiding officer shall complete each formal hearing and the commission shall issue its order no later than 75 days after the date a hospital requests the hearing, subject to the following:

1. If any party files a brief pertaining to a formal hearing, this period is extended to 85 days.

2. If any party requests oral arguments at a formal hearing, this period is extended to 105 days.

NOTE: The time periods listed in s. HRSC 4.21 (2) are derived from the periods specified in ss. 54.17 (1) (b) and (c), Stats.

HRSC 4.23 EXCEPTIONS. To the extent authorized by ch. 54, Stats., the commission may waive its rules prescribing the process of participating in

its proceedings as needed to gain additional information of reasonable probative value that a party would otherwise be unable to provide.

NOTE: Section HRSC 4.23 allows the Commission to waive its procedural rules in certain situations. For example, this rule would authorize the Commission to accept a petition to commence a rate review even though the form of the petition does not meet every requirement under ss. HRSC 1.09 (2) and 4.03, if the petition reveals a significant problem and the underlying facts could not otherwise be provided by the petitioner. On the other hand, this rule does not allow the Commission to waive procedural requirements that are enumerated in ch. 54, Stats. This rule would not authorize waiver of the requirement in s. 54.07 (2), Stats., which specifies that persons who wish to become parties to a rate review must inform the Commission within 30 days after notice of the rate review is published in a newspaper.

HRSC 4.25 CORRECTIONS. The commission may, without reopening a rate review or commencing a subsequent rate review, correct clerical errors in its rate-setting orders by submitting a revised order to each party to the rate review. The commission may adjust rates established in its order as needed to correct clerical errors.

SECTION 2. EFFECTIVE DATE OF RULES. (1) ORDERLY TRANSFER OF RESPONSIBILITY. The creation of the Hospital Rate-Setting Commission and implementation of its authority require a transfer of operations from the existing Wisconsin Hospital Rate Review Program to the new Commission. The Commission interprets its statutory authority as requiring that this transfer occur in an orderly manner, without creating a backlog of rate requests from hospitals that choose to forego an opportunity to request a rate increase from the Wisconsin Hospital Rate Review Program and without imposing an overwhelming burden on the Commission at the moment of its inception that renders regulation impossible. The Commission further interprets its statutory jurisdiction as applying prospectively from the date that its rules governing rate setting take effect, not retrospectively to hospitals whose 1985 fiscal years commenced prior to this date.

(2) SUBMISSION OF HISTORICAL DATA. In order to commence interpreting information from hospitals without delay, subchapter II of chapter HRSC 2 takes effect on January 1, 1985. This rule requires hospitals to submit historical data to the Commission by January 15, 1985, that it will use to prepare for the commencement of its rate-setting responsibilities while the Wisconsin Hospital Rate Review Committee continues reviewing hospital rate requests and setting hospital rates.

(3) RULES GOVERNING RATE SETTING. (a) Chapter HRSC 1, subchapters I and III of chapter HRSC 2 and chapters HRSC 3 and 4 take effect on February 1, 1985. Except as provided in paragraph (b), the effective date of these rules renders inapplicable s. 146.60, Stats., as specified in s. 146.60 (4), Stats. On February 1, 1985, the Commission will commence implementing its rate-setting responsibilities and begin accepting requests for annual rate increases from hospitals. The Wisconsin Hospital Rate Review Program may continue setting hospital rates until this date; in order to transfer regulatory authority to the Commission in an orderly manner the Commission will accept annual rate increase requests in 1985 only from hospitals whose fiscal year commences on or after February 1.

(b) Although the Commission will commence its rate-setting responsibilities on February 1, 1985, the Wisconsin Hospital Rate Review Program may continue to hear appeals from hospitals until March 31, 1985. On that date the Wisconsin Hospital Rate Review Program shall also complete the transfer of its records to the Commission.

(c) Chapter 54, Stats., and section 146.60, Stats., require hospitals whose fiscal years commence in January that are seeking annual rate increases to direct their requests to the Wisconsin Hospital Rate Review Program. Since the Commission interprets its authority as operating prospectively, it is not the proper forum for reviewing rate requests of

hospitals that should have been submitted to the Wisconsin Hospital Rate Review Program. As a result, for any hospital that did not seek a rate increase from the Wisconsin Hospital Rate Review Program in 1984 the Commission will accept an annual rate request commencing 90 days before the hospital's scheduled date for review in 1985, but not sooner. The Commission will also accept emergency rate requests from any hospital beginning on February 1, 1985, as provided in s. 54.17 (1m), Stats.

NOTE: This section on the effective date of HRSC rules can be further analyzed by studying the following examples:

1. If a hospital whose fiscal year ends on December 31 fails to seek a rate increase from WHRRP in 1984, it cannot expect the Commission to accept a rate request immediately upon commencement of its rate-setting responsibilities in February, 1985. Instead, this section allows such a hospital to submit an annual rate request to the Commission up to 90 days before its scheduled date for review (i.e., on or about October 1, 1985), but no sooner. The Commission intends to follow its schedule for reviewing hospital rates in 1985, allowing exceptions only in emergency situations.

2. If a hospital whose fiscal year ends on June 30 avoids seeking a rate increase from WHRRP in 1984, the same result will occur. The Commission will accept an annual rate request from such a hospital up to 90 days before its scheduled date for review (i.e., on or about April 2, 1985), but no sooner. The Commission will not accept a rate request from such a hospital in February or March of 1985 except in emergencies.

3. Any hospital with a fiscal year ending in February, March or April may initiate a rate request before the Commission immediately. These hospitals will have entered the 90-day period that precedes their scheduled dates for review as of February 1, 1985, so they will all be allowed to request rate increases without delay.

4. Any hospital, regardless of its fiscal year, can choose to postpone its request for a rate increase beyond the scheduled date for review. For example, if a hospital whose fiscal year ends in February decides to postpone requesting a rate increase from the Commission until May 1, 1985, the Commission will accept that rate request.

(End)

John C. Oestreicher
Chairman

Steven M. Barney
Commissioner

Dated October 26, 1984