

ORDER OF THE
WISCONSIN HOSPITAL RATE-SETTING COMMISSION
ADOPTING RULES

To repeal HRSC 2.17 (3) (a) and (3g); 3.013 (1) (b); 4.09 (3) (c) and (6); 4.17; 4.21; 5.05 (6) (a) 2. a and (b) 5; and 5.07; to renumber HRSC 4.09 (3) (title), (a) and (b); 4.11; 4.13 (3); and 4.19; to renumber and amend HRSC 4.09 (2); to amend HRSC 1.01 (3m); 1.11; 2.01 (2); 2.19 (1); 3.013 (2) (intro.); 3.02 (2) (title), (a) and (c) and (3); 3.03 (1); 3.07 (2) (a); 4.05 (1) (c) 1 and 2 (intro.) and (3); 4.06 (1); 4.07 (1); 4.08; 4.09 (title) and (1); 4.11 (3) (a) and (b), as renumbered; 4.15; 4.23; and 5.05 (6) (a) (intro.); to repeal and recreate HRSC 2.17 (3g); 3.013 (1) (a); 3.025; 3.05 (1) (a) 1 and 2 and (b) 1 and 2 and (2); 3.07 (1); 3.09; and 4.06 (3); and to create HRSC 1.01 (5m), (9g) and (9r); 2.17 (3m) and (17) (a) 4. a to g; 2.19 (2) (cm); 3.017 (2) (d) to (f); 3.02 (2) (am); 3.07 (4); 4.085; 4.09 (3) (c); 4.10 (3); and 4.11 (title), (1), (2), (5) and (6); relating to revising the hospital rate-setting commission's policies, procedures and methods.

Analysis by the Hospital Rate-Setting Commission

The enactment of 1985 Wisconsin Act 29 revised the hospital rate-setting commission's enabling authority in many areas. These rule changes reflect statutory revisions and incorporate additional modifications to commission policies, procedures and methods, as explained below.

A. ACCOUNTS RECEIVABLE.

The commission adopted an order on August 21, 1985 under which it analyzes the reasonableness of hospital accounts receivable. These rules codify that order. The rules establish a method of analyzing accounts receivable that has each hospital provide information annually about patient service revenue and accounts receivable for specified payers. The commission arrays hospital days in accounts receivable from low to high for each payer category and then calculates the mean, plus or minus one standard deviation. Of this range, the 60th percentile is the accounts receivable screen for any individual payer. These screens are aggregated for a hospital's particular payers in order to generate an overall, hospital-specific accounts receivable standard.

B. EXPEDITED REVIEW; INFLATIONARY INDEXES.

Under its current rules the commission allows small hospitals to submit shortened annual submission forms. This method of expedited review is available to hospitals whose gross annual patient revenue is less than \$5,000,000. This proposed order allows hospitals with gross annual patient revenue up to \$10,000,000 to be eligible for expedited review. The proposed order indicates that hospitals eligible for expedited review must, similar to other hospitals, provide information on employee compensation levels. The proposed order also explains how the commission will calculate inflationary indexes for the purpose of determining eligibility thresholds for expedited review, automatic approval and incentives.

C. DATA SUBMISSION.

Under current rules the commission's timeline for conducting rate reviews is triggered by the date a hospital's rate request, or request for settlement conference or hearing, is postmarked. The commission actually receives the documents from one to seven days later, depending on the mail. These rules specify that the date of receipt, not the date of mailing, is the beginning date of the timeline. The rules also specify that a hospital's date of receipt commences its timeline for purposes such as requesting a hearing or settlement conference.

D. AUTOMATIC APPROVAL.

Statutory changes in 1985 Wisconsin Act 29 completely revised the commission's method of determining which hospitals should be granted automatic approval of their rate requests, with little or no review. This proposed order adjusts commission rules accordingly, specifying how the commission interprets the eligibility criteria for automatic approval. The proposed order also specifies that, if the commission exercises its authority to require a review of a hospital's rates, the hospital may not preclude that review by immediately requesting a low rate increase and claiming eligibility for automatic approval. The rules limit the commission's authority to initiate reviews of a hospital's rates in order to impose a rate reduction, if the hospital is eligible for automatic approval. State law allows the commission to initiate a rate review for this purpose in several situations, one of which is where the hospital has actual total annual revenue exceeding its actual financial requirements by more than 10%. This rule states that the commission will exercise this authority only in cases where such excess revenue exists for 3 successive years.

E. CALCULATING EXCESS REVENUE.

Under current law, if a hospital generates revenue that exceeds the budgeted amount in a preceding fiscal year the commission may use a portion of the excess to reduce current financial requirements. Current rules interpret this statute as referring only to excess revenue generated in the fiscal year immediately preceding the budget year, but since rate reviews usually occur before audited information on that fiscal year have been prepared, excess revenue cannot be accurately calculated. This proposed order specifies that excess revenue will only be calculated using actual, not projected revenue.

In order to collect and use actual revenue information the proposed order states that the commission should calculate excess revenue for the most recent year for which actual net patient revenue is available.

F. APPROVING METHODS OF IMPLEMENTING RATE INCREASES.

Current law requires a hospital that has received a rate increase to indicate to the commission its proposed method of implementing the rate increase, for the commission's approval. This method may be an equal price increase for all charge elements, a uniform method such as cost-plus pricing or a series of selective increases where the hospital increases rates for some services more than for others. The commission tests a hospital's proposed method to ensure that it will not generate more than the hospital's budgeted revenue for the budget year. When a hospital proposes to increase its rates selectively, information on the volume of services is necessary to test the hospital's proposed method. This proposed order clarifies that the commission may require volume information for this purpose. The proposed order also clarifies that a hospital must not only submit charge information for 100 specified charge elements but must also, as specified in the statutes, state its proposed method of applying the approved rate increase to other charge elements. The proposed order indicates that subsequent price increases may occur throughout a hospital's budget year without further review or approval by the commission, if the increases are the result of using a method that the commission approved. If a hospital proposes to change its method or increase rates of any of the 100 specified charge elements later in the budget year, it must allow the commission to test the proposed change to determine if the resulting rate increase will exceed the approved level.

G. INCENTIVES.

Current rules include 3 incentives that the commission may award to hospitals. One incentive, created to account for changes in intensity and case mix, has not been used due to the existence of other factors in the rate-setting formula that tend to obscure determinations as to whether an incentive applicant is efficiently and economically operated. As currently constructed, this incentive cannot be applied. This proposed order repeals the intensity and case mix incentive and substitutes a broader provision authorizing the commission to award discretionary incentives, designed to fit a hospital's particular circumstances. The proposed order also revises the method of calculating eligibility for the commission's plant depreciation incentive, using percent price increase instead of percent revenue increase as a criterion of eligibility, and clarifies that incentives granted are one-time increases in hospital financial requirements that expire at year end.

H. GOVERNMENT REIMBURSEMENT.

Current law requires the commission to include in its rules at least 2 methods hospitals can use when projecting government reimbursement on their annual submission forms. Current rules prescribe two methods for estimating Medicare and Medicaid that have proven to be inaccurate and are rarely used. This proposed order substitutes two new methods for making these projections: hospitals may either rely on current law, regulations and rules or may comprise their own method, which the commission will compare against current laws, regulations and rules for accuracy.

I. CASE MIX INFORMATION.

Current law allows the commission to switch to a case mix reimbursement system after July 1, 1987, subject to legislative approval. This proposed order requires hospitals to begin collecting all-patient case mix information, and as of January 1, 1987, to provide the commission with that information. The commission will use this information to help determine the feasibility of a case mix reimbursement model.

J. HEARINGS.

The biennial budget bill eliminated formal hearings from the commission's procedures. This proposed order revises commission rules to delete references to formal hearings. The proposed order also deletes unnecessary procedural requirements and realigns various sections to organize procedural rules specific to settlement conferences, informal hearings and contested case hearings. The proposed order simplifies the hearing process, substituting the standard hearing process for handling consumer complaints and resolving trade secret issues in place of separate, different hearing procedures in these areas. The proposed order provides that the commission will conduct a contested case hearing in place of an informal hearing on the request of a hospital.

Current statutes and rules authorize staff to reject data submitted late, because strict timelines control the review period available to staff. This proposed order authorizes staff to respond to late data submissions by revising staff rate recommendations or, if the submissions materially change the hospital's rate request, by suggesting that the hospital withdraw and resubmit its rate request.

K. MISCELLANEOUS.

This proposed order clarifies the distinction between interested persons and parties to a hospital rate review, specifying that an interested person is anyone who expresses an interest in being notified of future rate reviews regarding particular hospitals while a party to the review is anyone who formally notifies the commission, after a rate review has commenced, of his or her desire to participate in the review.

The proposed order repeals a current rule specifying the format of notices that hospitals publish to inform the public of pending rate reviews, because one format of notice is not adequate to cover different types of rate review. The repealed rule would be replaced by a rule that authorizes the commission, by order, to prescribe the contents of these notices.

Current rules establish hospital peer groups for use by the commission when reviewing a hospital rate request. Current rules allow the commission to adopt orders updating its peer groups. On November 13, 1985 the commission adopted its first order in this area, which renders the peer groups that appear in commission rules obsolete and requires that the rule listing these obsolete peer groups be repealed. The proposed order defines certain terms commonly used in the rules to assist in understanding commission policies and procedures.

Pursuant to the authority vested in the hospital rate-setting commission by ss. 54.17 (1) (a) and 227.014 (2) (a), Wis. Stats., the state of Wisconsin hospital rate-setting commission adopts rules interpreting ss. 54.01, 54.03 (3), 54.04, 54.07 (2) and (3), 54.09 (1) (k), 54.11 (1) to (3) and (5), 54.13 (1) (a) to (f), 54.15, 54.17 (1) (a) and (d) 2 and (3), 54.21 (1) and (2) and 54.26, as follows:

SECTION 1. HRSC 1.01 (3m) is amended to read:

HRSC 1.01 (3m) "Charge element" means any ~~hospital~~ service, supply or combination of services or supplies ~~reported-at-the-direction-of-the commission~~ that a hospital provides for a price.

SECTION 2. HRSC 1.01 (5m), (9g) and (9r) are created to read:

HRSC 1.01 (5m) "Financial requirement" has the meaning specified in s. 54.09, Stats.

(9g) "Rates" has the meaning specified in s. 54.01 (3), Stats.

(9r) "Rate increase" means either:

(a) An increase in the price a hospital charges for any individual charge element.

(b) The aggregate price increase necessary to generate sufficient revenue to meet a hospital's full reasonable financial requirements at hospital projected volume levels accepted by the commission when the rate order is issued and when charge element information is provided under s. HRSC 3.02 (2) (am).

SECTION 3. HRSC 1.11 is amended to read:

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.

(2) DATE OF SERVICE. (a) The date of ~~service~~ servicing a document on the

commission is the day the commission receives the document is postmarked or delivered in person. If the document triggers an action by the commission that must be completed within a certain time period, the date the commission receives the document commences the time period.

SECTION 3m. HRSC 1.11 (2) (b) is created to read:

HRSC 1.11 (2) (b) 1. Except as provided in subd. 2, if a document served on a hospital or other party in commission proceedings triggers an action by the recipient that must be completed within a certain time period, the date the hospital or other party receives the document commences the time period. The hospital or other party has the burden of proving when it received the document. An affidavit or date stamp constitutes prima facie evidence of the date of receipt.

2. If a hospital or other party intends to petition for a rehearing of a commission decision under s. 227.12 (1), Stats., the date the decision is personally served or mailed commences the 20-day time period for filing the petition. If a hospital or other party intends to petition for judicial review of a commission decision under s. 227.16 (1), Stats., the day after the date the decision is personally served or mailed commences the 30-day time period for filing the petition.

SECTION 4. HRSC 2.01 (2) is amended to read:

HRSC 2.01 (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~~ or, either in situations where timely submission of data has been extended by commission waiver or where the commission has requested further data, after other time limits specified by the commission.

SECTION 5. HRSC 2.17 (3) (a) is repealed.

SECTION 6. HRSC 2.17 (3g) is repealed.

SECTION 6m. HRSC 2.17 (3m) is created to read:

HRSC 2.17 (3m) CASE MIX. All-patient case mix information, based on diagnosis related groups established under 42 CFR s. 412.60. This subsection first applies to annual reports filed beginning January 1, 1987.

SECTION 10. HRSC 2.19 (1) is amended to read:

HRSC 2.19 (1) ELIGIBILITY. (a) Any hospital whose gross annual patient revenue ~~during the fiscal year preceding the budget year~~ is less than ~~\$5,000,000~~ \$10,000,000, as reported on its most recent audited financial statements, 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~~ inflation rate, as specified in s. HRSC 3.09.

SECTION 11. HRSC 2.19 (2) (cm) is created to read:

HRSC 2.19 (2) (cm) The employee information specified in s. HRSC 2.17 (6).

SECTION 12. HRSC 3.013 (1) (a) is repealed and recreated to read:

HRSC 3.013 (1) (a) The commission shall, by order, prescribe the format of notices hospitals are required to publish under s. 54.07 (2), Stats.

SECTION 13. HRSC 3.013 (1) (b) is repealed.

SECTION 14. HRSC 3.013 (2) (intro.) is amended to read:

HRSC 3.013 (2) (intro.) 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)~~ of a pending rate request to each interested person within 10 days after any of the following occurs:

SECTION 15. HRSC 3.017 (2) (d) to (f) are created to read:

HRSC 3.017 (2) (d) 1. Each hospital shall, regardless of whether it submits a rate request during the year, annually complete and submit to the commission a report identifying annual patient service revenue and accounts receivable for each of the following categories of payers:

- a. Medicare, inpatient and outpatient.
- b. Medicaid, inpatient and outpatient.
- c. Blue Cross/Blue Shield United.
- d. Health maintenance organizations.
- e. Other commercial insurers.
- f. Community mental health or developmental disabilities boards under s. 51.42 or 51.437, Stats. Only specialty hospitals are required to identify annual patient service revenue and accounts receivable for these payers.
- g. Self payers.
- h. Other payers.
- i. Medicaid patient service revenue and accounts receivable, for any nursing home owned or operated by the hospital.

j. Self payer and other payer patient service revenue and accounts receivable, for any nursing home owned or operated by the hospital.

2. a. Each hospital whose fiscal year ends between January 1 and June 30 shall submit its accounts receivable report by September 30. The commission shall update its standard, based on data received from these reports, and shall use this updated standard for all hospitals whose fiscal years end between January 1 and June 31.

b. Each hospital whose fiscal year ends between July 1 and December 31 shall submit its accounts receivable report by March 31. The commission shall update its standard, based on data received from these reports, and shall use this updated standard for all hospitals whose fiscal years end between July 1 and December 31.

(e) 1. The commission shall analyze hospital accounts receivable by arraying hospital days in accounts receivable for each payer category from low to high, based on average daily revenue of the previous 365 days. It shall then calculate the mean and standard deviation for each category, removing from the array data of any hospital whose days in accounts receivable are below the mean minus one standard deviation or above the mean plus one standard deviation. Of the remaining range, the 60th percentile is the accounts receivable screen for any individual payer.

2. The commission shall calculate the accounts receivable standard for any hospital as the sum of the average daily revenue times the accounts receivable screen for each of the hospital's payers.

(f) The commission shall apply the accounts receivable standard as follows:

1. Any hospital exceeding the standard is subject to a disallowance of financial requirements under s. 54.13 (1) (e), Stats., unless it can provide compelling justification of the excess.

2. Any hospital whose accounts receivable days outstanding fell below the standard in its previous rate review:

a. May not increase its accounts receivable days outstanding more than the increase in the standard days from year to year, or 25% of the amount by which the hospital's accounts receivable days outstanding in the previous rate review were less than the standard used in that review, whichever is greater. The hospital may only increase its accounts receivable days outstanding by more than this amount if it provides justification of the excess to the commission's satisfaction.

b. Shall reduce its accounts receivable days outstanding by at least 75% of the change in the accounts receivable standard, if the standard decreases during its next rate review. The hospital may only reduce its accounts receivable days outstanding by less than this amount if it provides justification of the excess to the commission's satisfaction.

SECTION 16. HRSC 3.02 (2) (title) and (a) are amended to read:

HRSC 3.02 (2) (title) CHARGE ELEMENT RATES. (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 and its proposed method of applying the price increase granted to the remaining charge elements.

SECTION 17. HRSC 3.02 (2) (am) is created to read:

HRSC 3.02 (2) (am) With its submission of proposed rates, the hospital shall state the actual volume for each of the 100 charge elements listed under par. (a) for the fiscal year preceding the budget year under review. If the commission issues its rate-setting order prior to 15 days after the hospital's fiscal year end, the hospital may state the projected year-end volume instead of the actual volume.

SECTION 18. HRSC 3.02 (2) (c) is amended to read:

HRSC 3.02 (2) (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. The commission may require a hospital to submit volume or other information regarding its charge elements in order to make this finding.

SECTION 19. HRSC 3.02 (3) is amended to read:

HRSC 3.02 (3) RATE OVERCHARGES. No Except as provided in this subsection, no hospital may charge rates for the charge elements specified in sub. (2) that exceed the rates the commission approved for these charge elements under sub. (2) (c). Any hospital may adjust its ~~rates for these charge elements~~ rate for a charge element listed under sub. (2) (a) if it notifies the commission receives the commission's approval prior to implementing the rate change. A hospital that decides to adjust the rate for any other charge element may do so without prior commission approval, if it uses the method previously approved by the commission to make the adjustment. The commission may disallow a rate change proposed under sub. (2) or this subsection that it finds will generate annual patient revenue exceeding the amount authorized under sub. (1) increase hospital rates, as defined in s. HRSC 1.01 (9r) (b), in the aggregate unless the proposed rate change conforms with the application of a method approved by the commission.

SECTION 20. HRSC 3.025 is repealed and recreated to read:

HRSC 3.025 AUTOMATIC APPROVAL OF RATE REQUESTS. (1) DEFINITIONS. For the purpose of interpreting s. 54.21 (2), Stats. and in this section:

(a) "Complete review" is a rate review by the commission, during which it is authorized to disallow financial requirements under s. 54.13 (1), Stats. A hospital that received approval of its rates under s. 54.21 (2), 1983 Stats., or under s. 54.21 (2), Stats., has not had a complete review of its rates. A

hospital that withdraws its rate request has not had a complete review of its rates. The commission's review of a hospital's request to adjust the rates of its charge elements under s. HRSC 3.02 (3) is not a complete review of the hospital's rates.

(b) "Last fiscal year" means the most recent complete fiscal year for which audited financial statements are available.

(2) AVAILABILITY OF AUTOMATIC APPROVAL. (a) If the commission initiates a review of a hospital's rates under s. 54.07 (1), Stats., the hospital may not prevent the commission from completing this review of the hospital's rates and financial requirements by subsequently requesting automatic approval.

(b) In situations where the commission initiates a rate review for the purpose of reducing rates under s. 54.17 (4) (bm) 4, Stats., the limitation on use of automatic approval under par. (a) applies only if the commission, using the hospital's audited financial statements, finds that the hospital's actual total annual revenue exceeds its actual total financial requirements by more than 10% for each of 3 successive years and these years occur at some time after the hospital has received a complete review.

SECTION 21. HRSC 3.03 (1) is amended to read:

HRSC 3.03 (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 actual net patient revenue for the ~~fiscal-year-preceding-the-budget-year-under-review~~ most recent fiscal year that audited information on actual net patient revenue is available exceeds the hospital's budgeted net patient revenue for that year.

SECTION 22. HRSC 3.05 (1) (a) 1 and 2 and (b) 1 and 2 and (2) are repealed and recreated to read:

HRSC 3.05 (1) (a) 1. Submitting to the commission a completed copy of commission workpapers for projecting medicare reimbursement or otherwise relying on federal law and regulations.

2. Submitting to the commission its own method of projecting medicare reimbursement. The hospital may propose any method it chooses but shall justify its superiority over the method specified in subd. 1 by documenting both the method and the result. The commission shall compare any method submitted under this subdivision with its own method, relying on federal law and regulations, in order to determine if the method proposed is reasonable for rate-setting purposes.

(b) 1. Submitting to the commission a completed copy of commission workpapers for projecting medical assistance reimbursement or otherwise relying on federal and state law, rules and regulations.

2. Submitting to the commission its own method of projecting medical assistance reimbursement. The hospital may propose any method it chooses but shall justify its superiority over the method specified in subd. 1 by documenting both the method and the result. The commission shall compare any method submitted under this subdivision with its own method, relying on federal and state law, rules and regulations, in order to determine if the method proposed is reasonable for rate-setting purposes.

(2) RETROSPECTIVE ADJUSTMENTS. For medicare or medical assistance final settlements that occur no more than 12 months before the commission issues a rate order, the commission shall increase or decrease the estimate of medicare or medical assistance allowances used in this rate order by an amount not to exceed the difference between the amount of the allowance determined at the time of the final settlement and the estimated allowance used for rate-setting purposes for the period covered by the final settlement. If this difference requires a decrease in the estimate of medicare or medical assistance

allowances and the decrease is so large that it would generate a private payer rate decrease, the commission may spread the retrospective adjustment over two or more years in order to reflect accurately the effect of medicare and medical assistance allowances on private payer rates.

SECTION 23. HRSC 3.07 (1) is repealed and recreated to read:

HRSC 3.07 (1) DISCRETIONARY INCENTIVES. The commission may award incentives designed to fit a hospital's particular circumstances.

SECTION 24. HRSC 3.07 (2) (a) is amended to read:

HRSC 3.07 (2) (a) The hospital requests a percentage price 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~~ inflation rate most recently calculated under s. HRSC 3.09 (3). 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~~ inflation rate most recently calculated under s. HRSC 3.09 (3). 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.

SECTION 25. HRSC 3.07 (4) is created to read:

HRSC 3.07 (4) PRIOR INCENTIVES NOT PART OF BASE RATES OR FINANCIAL REQUIREMENTS. No incentive awarded by the commission or Wisconsin hospital rate review program becomes a part of the recipient hospital's base rates or financial requirements in a succeeding year. Unless the commission specifies otherwise in a rate order, these incentives are one-time increases in the hospital's total charges and, at the conclusion of the fiscal year in which the incentive is received, the recipient hospital shall remove the rate increase generated by the incentive from its rates.

SECTION 26. HRSC 3.09 is repealed and recreated to read:

HRSC 3.09 TREND FACTORS. In order to adjust the revenue thresholds specified in s. 54.26, Stats., the commission shall:

(1) INFLATIONARY REVENUE ADJUSTMENTS. Adjust the revenue thresholds each July 1, commencing July 1, 1986. In 1987 and thereafter, these revenue thresholds shall be recalculated based on actual inflationary figures for the preceding 12 months and then adjusted for the following year's estimated inflation levels.

(2) APPLICATION. Apply each revenue threshold against revenue figures reported on a hospital's most recent audited financial statements.

(3) QUARTERLY CALCULATIONS OF AUTOMATIC APPROVAL PRICE THRESHOLD. The commission shall, on a quarterly basis, establish the inflation rate that requested rate increases must be below in order for a hospital to qualify for automatic approval under s. 54.21 (2) (a) 2, Stats.

NOTE: Section 54.21 (2) (a) 2, 1983 Stats., required the Commission to use the same hospital market basket index used by the Wisconsin Hospital Rate Review Program. Although that law has been repealed and recreated, requiring the repeal and recreation of this rule, the Commission intends to continue using the same hospital market basket index. 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, which also publishes the consumer price index that the Commission will use.

SECTION 27. HRSC 4.05 (1) (c) 1 and 2 (intro.) and (3) are amended to read:

HRSC 4.05 (1) (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. (intro.) 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:

(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.~~ The hearing shall be conducted using the procedures specified for hearings under s. 54.15 (3), Stats., and in accordance with applicable rules of this chapter.

SECTION 28. HRSC 4.06 (1) is amended to read:

HRSC 4.06 (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, the hospital whose rates are under review or 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 the hospital or 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~~ any other person 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.

SECTION 29. HRSC 4.06 (3) is repealed and recreated to read:

HRSC 4.06 (3) HEARING. Any hearing concerning the need for trade secret protection shall be conducted using the procedures specified for hearings under s. 54.15 (3), Stats., and in accordance with applicable rules of this chapter.

SECTION 30. HRSC 4.07 (1) is amended to read:

HRSC 4.07 (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.

SECTION 31. HRSC 4.08 is amended to read:

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~~ or hearing under s. 54.15 (1) ~~or~~ (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~~ party to a review 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 or hearing. 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~~ as provided in ss. 19.84 and 19.85, Stats.

SECTION 32. HRSC 4.085 is created to read:

HRSC 4.085 STAFF RECOMMENDATIONS. If a hospital materially changes its data more than 20 days after submitting a rate request, commission staff may refuse to accept the data, as provided in s. HRSC 2.01 (2), suggest the hospital request approval from the commission to withdraw and resubmit the rate request, or revise its rate recommendations. After the hospital files a request for a hearing, commission staff may only revise its rate recommendations if the hospital materially changes its data after the date of the request.

SECTION 33. HRSC 4.09 (title) and (1) are amended to read:

HRSC 4.09 (title) GENERAL PROCEDURES FOR 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.

SECTION 34. HRSC 4.09 (2) is renumbered 4.10 and amended to read:

HRSC 4.10 (title) CONDUCTING SETTLEMENT CONFERENCES. (1) REQUESTING A SETTLEMENT CONFERENCE. 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. This request shall be in writing and shall specify the points of dispute with the staff rate recommendations that the hospital intends to discuss at the settlement conference.

(2) PARTICIPATION IN A SETTLEMENT CONFERENCE. 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.

SECTION 35. HRSC 4.09 (3) (title), (a) and (b) are renumbered 4.11 (3) (title), (a) and (b) and 4.11 (3) (a) and (b), as renumbered, are amended to read:

HRSC 4.11 (3) (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 under s. 54.15 (3), Stats., 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.

SECTION 36. HRSC 4.09 (3) (c) is repealed.

SECTION 37. HRSC 4.09 (6) is repealed.

SECTION 38. HRSC 4.10 (3) is created to read:

HRSC 4.10 (3) CONCLUDING A SETTLEMENT CONFERENCE. A settlement conference is closed when, in the opinion of the presiding commissioner, all points of dispute have been resolved or clearly identified and defined as issues for a potential hearing.

SECTION 39. HRSC 4.11 is renumbered 4.16.

SECTION 40. HRSC 4.11 (title), (1), (2), (5) and (6) are created to read:

HRSC 4.11 CONDUCTING HEARINGS. (1) REQUESTING A HEARING. No hospital may request a hearing under s. 54.15 (3), Stats., until after the conclusion of the settlement conference. Each request for a hearing under s. 54.15 (3), Stats., shall specify the points of dispute that the hospital intends to present as issues at the hearing. Only those points of dispute that arise solely as a result of the staff rate recommendations or any revision to the rate recommendations may be the subject matter of a hearing under s. 54.15 (3), Stats.

(2) PREHEARING PROCEEDINGS. (a) The presiding officer at a hearing may conduct a preliminary proceeding for the purpose and in the manner specified for prehearing proceedings under s. 227.07 (4), Stats.

(b) With the exception of rebuttal materials, each party shall submit 5 copies to the commission of the names of witnesses to be called and the exhibits to be introduced and one copy to each other party to the hearing. These materials are subject to exclusion from the hearing if not submitted at least 3 working days, as defined in s. 227.01 (12), Stats., prior to the commencement of the hearing, unless the party can show good cause for failing to comply with this paragraph.

(5) FILING BRIEFS. The presiding commissioner may allow the commission staff and any party to an informal hearing to file written arguments pertaining to issues at the hearing. Each party who files a brief shall submit 5 copies to the commission and one copy to each party.

(6) INFORMAL HEARINGS AND CONTESTED CASE HEARINGS. (a) The commission shall conduct a class 1 contested case hearing under s. 54.15 (3) (c), Stats., in place of an informal hearing on the request of a hospital.

(b) If a hearing has been scheduled, is being held or has been held in response to a request under s. 54.15 (3), Stats., the points of disagreement between the hospital, parties to the review and the commission staff that are unresolved at the settlement conference constitute the subject matter of that hearing and may not be the subject matter of an additional contested case proceeding under s. 54.15 (6), Stats.

SECTION 41. HRSC 4.13 (3) is renumbered 4.11 (4).

SECTION 42. HRSC 4.15 is amended to read:

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 (3) (c) or (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.~~

SECTION 43. HRSC 4.17 is repealed.

SECTION 44. HRSC 4.19 is renumbered 4.09 (2).

SECTION 45. HRSC 4.21 is repealed.

SECTION 46. HRSC 4.23 is amended to read:

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 person would otherwise be unable to provide.

SECTION 47. HRSC 5.05 (6) (a) (intro.) is amended to read:

HRSC 5.05 (6) (a) (intro.) If the commission updates the peer groups as specified in s. HRSC ~~5.07~~ 5.03, hospitals may appeal the revision of peer groups as follows:

SECTION 48. HRSC 5.05 (6) (a) 2. a and (b) 5 are repealed.

SECTION 49. HRSC 5.07 is repealed.

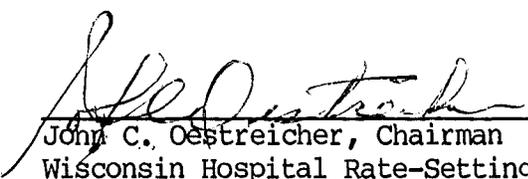
SECTION 50. CROSS-REFERENCE CHANGES. In the sections of rules listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

<u>A</u>	<u>B</u>	<u>C</u>
Rule Sections	Old Cross-References	New Cross-References
4.07 (2)	sub. (1) and s. 54.15 (5), Stats.	sub. (1)

SECTION 51. EFFECTIVE DATE OF RULES. (1) Except as provided in sub. (2), the rules contained in this order shall take effect on the first day of the month commencing after the date of publication.

(2) The treatment of s. HRSC 2.17 (3g) takes effect on January 1, 1987.

(END)


John C. Oestreicher, Chairman
Wisconsin Hospital Rate-Setting Commission

Dated: April 23, 1986

1641a/0047A



State of Wisconsin \ Hospital Rate-Setting Commission

April 23, 1986

John C. Oestreicher, Chairman
Steven M. Barney, Commissioner
Katherine M. Kiedrowski, Commissioner

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Dear Mr. Poulson:

Enclosed are two certified copies of Commission rules, adopted today, relating to revising the Commission's policies, procedures and methods. Please publish this adopted rule in the Wisconsin Administrative Register.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'J. C. Oestreicher'.

John C. Oestreicher, Chairman
Hospital Rate-Setting Commission

JCO:tab/3137a

Enclosure