



## 2013 ASSEMBLY BILL 728

February 4, 2014 - Introduced by Representatives MARKLEIN, LEMAHIEU, BALLWEG, BEWLEY, BROOKS, JACQUE, KAPENGA, KNODL, KNUDSON, T. LARSON, NYGREN, RINGHAND, SEVERSON, DOYLE and STRACHOTA, cosponsored by Senators VUKMIR, GROTHMAN and SCHULTZ. Referred to Committee on Health.

1     **AN ACT** *to repeal* 50.36 (3g) and 50.36 (6m) (a) 1.; *to amend* 50.35, 50.36 (1),  
2           50.36 (2) (a), 50.36 (2) (b), 50.36 (3m), 50.36 (4), 50.36 (6m) (a) (intro.), 50.36  
3           (6m) (a) 2., 50.36 (6m) (a) 3., 50.36 (6m) (b), 50.37 (intro.), 50.37 (4), 50.39 (1)  
4           and 323.19 (1); and *to create* 50.33 (1c), 50.33 (3), 50.36 (1m), 50.36 (3) (am) and  
5           50.36 (3L) of the statutes; **relating to:** regulation of hospitals, granting  
6           rule-making authority, and requiring the exercise of rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

#### ***Rules and standards that apply to hospitals***

Under current state law, the Department of Health Services (DHS) must promulgate, adopt, amend, and enforce rules and standards for the construction, maintenance, and operation of hospitals that are deemed necessary to provide safe and adequate care and treatment of the patients in hospitals and to protect the health and safety of hospital patients and employees. On receipt of an application, DHS must issue a certificate of approval to maintain a hospital if the applicant and hospital facilities meet the requirements established by DHS.

Under current federal law, a hospital participating in the federal Medicare program must satisfy certain requirements, including requirements set out in federal regulations promulgated by the federal Centers for Medicare and Medicaid Services in the United States Department of Health and Human Services (CMS).

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These federal regulations are known as the federal conditions for Medicare participation for hospitals (COP). Certain hospitals designated as “critical access hospitals” pursuant to federal law operate under a different COP.

This bill generally provides that, effective July 1, 2016:

1. DHS must use and enforce the COPs as the minimum standards that apply to hospitals. DHS must interpret the COPs using guidelines adopted by CMS, unless DHS determines that a different interpretation is reasonably necessary to protect public health and safety.

2. DHS may not, except as described below, enforce certain administrative rules pertaining to hospitals that were promulgated by DHS that are currently in effect, including rules pertaining to management of hospitals, hospital medical staff, and required services in hospitals.

3. DHS must, within the scope of its rulemaking authority, promulgate rules to repeal and recreate its current rules pertaining to hospitals. Upon promulgation of a rule to repeal and recreate its current rules pertaining to hospitals, the prohibition against enforcement of DHS’s rules no longer applies.

The bill also eliminates a restriction in current law providing that nothing in DHS’s rules or standards for hospitals may pertain to a person licensed to practice medicine and surgery or dentistry.

***Other changes to laws regulating hospitals***

The bill makes other changes to the laws regulating hospitals. Significant changes to current law in the bill include the following:

1. Current law provides that the building codes and construction standards of the Department of Safety and Professional Services (DSPS) apply to all hospitals. Current law also allows DHS to promulgate and adopt rules and standards for the construction of hospitals, but provides that DHS may adopt additional construction codes and standards for hospitals only if they are not lower than the requirements of DSPS.

The bill retains the provision providing that the building codes and construction standards of DSPS apply to all hospitals, but provides that they apply only to the extent that they are not incompatible with any building codes or construction standards required by the COPs. The bill retains the authority for DHS to promulgate and adopt rules and standards for the construction of hospitals, but eliminates the specific restriction on that authority described above.

2. Under current law, DHS must conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with building code requirements in the laws administered by DSPS and with physical plant requirements for hospitals. Also under current law, DHS must promulgate rules that establish a fee schedule for its services in conducting the plan reviews described above. The schedule may not, however, set the fees at levels that are higher than certain specified amounts.

This bill retains the requirement that DHS conduct plan reviews of all capital construction and remodeling projects of hospitals and retains the authority of DHS to promulgate rules establishing a fee schedule for the plan reviews, but eliminates the restrictions on amounts in the fee schedule.

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3. Current DHS rules require the governing body of a hospital to establish a policy that requires every patient to be under the care of a licensed physician, dentist, or podiatrist. The policy must, under those rules, provide that a person may be admitted to a hospital only on the recommendation of a physician, dentist, or podiatrist, with a physician designated to be responsible for the medical aspects of care.

Also, under current law, a hospital that admits patients for treatment of mental illness may grant to a psychologist who is listed or eligible to be listed in the National Register of Health Services Providers in Psychology or who is certified by the American Board of Professional Psychology an opportunity to obtain hospital staff privileges to admit, treat, and discharge patients. If a hospital grants a psychologist hospital staff privileges, the psychologist or the hospital must, prior to or at the time of hospital admission of a patient, identify an appropriate physician with admitting privileges at the hospital who shall be responsible for the medical evaluation and medical management of the patient for the duration of his or her hospitalization.

The bill provides that a hospital may afford any practitioner the opportunity to be a member of the hospital staff and obtain hospital staff privileges if the membership or privileges are not otherwise prohibited and the membership or privileges are consistent with the practitioner's scope of practice.

The bill repeals the provisions in current law that specifically address the granting of hospital staff privileges to psychologists.

4. Under current law, the secretary of health services or his or her designee (secretary) may grant a variance to a statute affecting hospitals or a rule of DHS affecting hospitals if all of the following apply: 1) the secretary determines that a disaster, as defined under the emergency management law, has occurred; 2) a hospital has requested the variance; and 3) the secretary determines that the variance is necessary to protect the public health, safety, or welfare. Such a variance must be for a stated term not to exceed 90 days, except that the secretary may extend the variance upon request by the hospital if the secretary determines that an extension is necessary to protect the public health, safety, or welfare.

This bill makes the following changes with respect to variances affecting hospitals: 1) eliminates the requirement that, in order to grant a variance, the secretary determine that a disaster has occurred; 2) eliminates the requirement that a variance be for a limited term unless extended; 3) also allows a variance to be granted for the purpose of supporting the efficient and economic operation of a hospital; 4) expands the scope of the secretary's authority to any other requirement for hospitals, such as the COP; and 5) allows the secretary to grant a waiver, in addition to granting a variance, from the requirements for hospitals.

5. The bill provides that a hospital accredited by an approved national accrediting organization is exempt from routine inspections and investigations to determine compliance with, and is considered to be in compliance with, the requirements for hospitals. The bill provides, however, that this exemption does not extend to plan reviews conducted by DHS of capital construction and remodeling projects of hospitals, and provides that DHS may inspect an accredited hospital to

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investigate a complaint or comply with a request by CMS, including a request to validate the findings of the accrediting organization.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2           50.33 (1c) “Conditions for Medicare participation for hospitals” means the  
3 conditions of participation specified under 42 CFR 482 or, with respect to critical  
4 access hospitals, 42 CFR 485.

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

6           50.33 (3) “Requirements for hospitals” means all of the rules, standards, and  
7 requirements described in or promulgated under ss. 50.32 to 50.39 that apply to  
8 hospitals, including the standards described under s. 50.36 (1).

9           **SECTION 3.** 50.35 of the statutes is amended to read:

10           **50.35 Application and approval.** Application for approval to maintain a  
11 hospital shall be made to the department on forms provided by the department. On  
12 receipt of an application, the department shall, except as provided in s. 50.498, issue  
13 a certificate of approval if the applicant and hospital facilities meet the requirements  
14 established by the department for hospitals. The department shall issue a single  
15 certificate of approval for the University of Wisconsin Hospitals and Clinics  
16 Authority that applies to all of the Authority’s inpatient and outpatient hospital  
17 facilities that meet the requirements established by the department for hospitals  
18 and for which the Authority requests approval. For a free-standing pediatric  
19 teaching hospital, the department shall issue a single certificate of approval that

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1 applies to all of the hospital's inpatient and outpatient hospital facilities that meet  
2 the requirements established by the department for hospitals and for which the  
3 hospital requests approval. Except as provided in s. 50.498, this approval shall be  
4 in effect until, for just cause and in the manner herein prescribed, it is suspended or  
5 revoked. The certificate of approval may be issued only for the premises and persons  
6 or governmental unit named in the application and is not transferable or assignable.  
7 The department shall withhold, suspend, or revoke approval for a failure to comply  
8 with s. 165.40 (6) (a) 1. or 2., but, except as provided in s. 50.498, otherwise may not  
9 withhold, suspend, or revoke approval unless for a substantial failure to comply with  
10 ~~ss. 50.32 to 50.39 or the rules and standards adopted by the department~~ the  
11 requirements for hospitals after giving a reasonable notice, a fair hearing, and a  
12 reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m)  
13 shall be considered to be a substantial failure to comply under this section.

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

15 50.36 (1) Beginning on July 1, 2016, except as otherwise provided under ss.  
16 50.32 to 50.39, the department shall use and enforce the conditions for Medicare  
17 participation for hospitals as the minimum standards that apply to hospitals. The  
18 department shall interpret the conditions for Medicare participation for hospitals  
19 using guidelines adopted by the federal centers for medicare and medicaid services,  
20 unless the department determines that a different interpretation is reasonably  
21 necessary to protect public health and safety. The department shall may  
22 promulgate, adopt, amend, and enforce such additional rules and standards for  
23 hospitals for the construction, maintenance, and operation of the hospitals deemed  
24 that the department determines are necessary to provide safe and adequate care and  
25 treatment of the hospital patients ~~in the hospitals~~ and to protect the health and

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1 safety of the patients and employees; ~~and nothing contained herein shall pertain to~~  
2 ~~a person licensed to practice medicine and surgery or dentistry.~~ The building codes  
3 and construction standards of the department of safety and professional services  
4 shall apply to all hospitals ~~and the department may adopt additional construction~~  
5 ~~codes and standards for hospitals, provided to the extent that they are not lower than~~  
6 ~~the requirements of the department of safety and professional services~~ incompatible  
7 with any building codes or construction standards required by the conditions for  
8 Medicare participation for hospitals. Except for the construction codes and  
9 standards of the department of safety and professional services and except as  
10 provided in s. 50.39 (3), the department shall be the sole agency to adopt and enforce  
11 rules and standards pertaining to hospitals.

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

13 50.36 **(1m)** (a) Notwithstanding sub. (1) and except as provided pars. (b) and  
14 (c), all of the following apply:

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

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

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

22 (c) Paragraph (a) does not apply beginning on the date that a permanent rule  
23 promulgated under ch. 227 that repeals and recreates ch. DHS 124, Wis. Adm. Code,  
24 takes effect as provided in s. 227.22.

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

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1           50.36 (2) (a) ~~The Notwithstanding sub. (3L)~~, the department shall conduct plan  
2 reviews of all capital construction and remodeling projects of hospitals to ensure that  
3 the plans comply with any applicable building code requirements under ch. 101 and  
4 with any physical plant requirements under this chapter or under rules promulgated  
5 under this chapter.

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

7           50.36 (2) (b) The department shall promulgate rules that establish a fee  
8 schedule for its services in conducting the plan reviews under par. (a). ~~The schedule~~  
9 ~~established under these rules shall set fees for hospital plan reviews in amounts that~~  
10 ~~are less than the sum of the amounts required on September 30, 1995, for fees under~~  
11 ~~this subsection and for fees for examination of hospital plans under s. 101.19 (1) (a),~~  
12 ~~1993 stats.~~

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

14           50.36 (3) (am) A hospital may grant any practitioner the opportunity to be a  
15 member of the hospital staff and obtain hospital staff privileges if the membership  
16 or privileges are not prohibited under sub. (1) and are consistent with the  
17 practitioner's scope of practice.

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

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

20           50.36 (3L) A hospital accredited by an approved national accrediting  
21 organization pursuant to 42 USC 1395bb (a) (1) is exempt from routine inspections  
22 and investigations to determine compliance with and is considered to be in  
23 compliance with the requirements for hospitals. The department may inspect an  
24 accredited hospital to investigate a complaint or comply with the request of the

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1 federal centers for medicare and medicaid services, including a request to validate  
2 the findings of the accrediting organization.

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

4 50.36 (3m) The department shall require a hospital that is accredited as a  
5 hospital by a ~~private~~ national accrediting organization pursuant to 42 USC 1395bb  
6 (a) (1) to submit to the department ~~a copy of the summary accreditation~~  
7 ~~recommendation and may require the hospital to submit to the department copies~~  
8 ~~of all correspondence sent or received on or after August 30, 1989, including survey~~  
9 ~~results, between the hospital and the accrediting organization. Accreditation~~  
10 ~~letters, reports and related~~ evidence of current accreditation. Any evidence of  
11 accreditation and other accreditation-related correspondence or other materials  
12 submitted by or on behalf of a hospital to the department, except those submitted by  
13 a county mental health complex under s. 51.08, under this subsection are not subject  
14 to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the  
15 department.

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

17 50.36 (4) The Except as provided in sub. (3L), the department shall make or  
18 cause to be made such inspections and investigation, as are reasonably deemed  
19 necessary to obtain compliance with the ~~rules and standards~~ requirements for  
20 hospitals. It shall afford an opportunity for representatives of the hospitals to  
21 consult with members of the staff of the department concerning compliance and  
22 noncompliance with ~~rules and standards~~ the requirements for hospitals. If the  
23 department takes enforcement action against a hospital for a violation of ss. 50.32  
24 to 50.39, or rules promulgated or standards adopted under ss. 50.32 to 50.39 the  
25 requirements for hospitals, and the department subsequently conducts an on-site

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1 inspection of the hospital to review the hospital's action to correct the violation, the  
2 department may, unless the hospital is operated by the state, impose a \$200  
3 inspection fee on the hospital.

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

5 50.36 **(6m)** (a) (intro.) The secretary or his or her designee may grant a variance  
6 to ~~a statute affecting hospitals or a rule~~ or a waiver from any of the department  
7 affecting requirements for hospitals if all of the following apply:

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

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

10 50.36 **(6m)** (a) 2. A hospital has requested the variance or waiver.

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

12 50.36 **(6m)** (a) 3. The secretary or his her designee determines that the variance  
13 or waiver is necessary to protect the public health, safety, or welfare or to support the  
14 efficient and economic operation of the hospital.

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

16 50.36 **(6m)** (b) A variance or waiver granted under par. (a) ~~shall~~ may be for a  
17 stated term ~~not to exceed 90 days, except that. If a variance or waiver is for a stated~~  
18 term, the secretary or his her designee may extend the variance or waiver upon  
19 request by the hospital if he or she determines that an extension is necessary to  
20 protect the public health, safety, or welfare or to support the efficient and economic  
21 operation of the hospital.

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

23 **50.37 Notification to accrediting organization.** (intro.) The department  
24 shall notify a ~~private~~ national accrediting organization that has accredited a hospital

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1 and the board of governors of the injured patients and families compensation fund  
2 under s. 619.04 (3) if the department has done any of the following:

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

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

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

10 50.39 (1) ~~Sections 50.32 to 50.39 and the rules promulgated pertaining thereto~~  
11 ~~shall~~ The requirements for hospitals apply to all facilities coming under the  
12 definition of a "hospital" which are not specifically exempt by ss. 50.32 to 50.39.

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

14 323.19 (1) The secretary of health services may grant a hospital a variance to  
15 ~~a statute or rule affecting~~ a waiver from a requirement for hospitals in response  
16 ~~to a disaster~~ as provided in s. 50.36 (6m).

17 (END)