

CHAPTER 150

REGULATION OF HEALTH CARE INSTITUTIONS

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SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

150.001 Definitions. In this chapter:

(1) "Ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization, but does not include the offices of private physicians or dentists whether for individual or group practice.

(3) "Clinical equipment" means equipment required to perform diagnostic or therapeutic procedures.

(4) "Community-based residential facility" has the meaning ascribed in s. 50.01 (1) (a).

(5) "Department" means the department of health and social services.

(6) "Health care institutions" include hospitals, psychiatric hospitals, tuberculosis hospitals, nursing homes, kidney disease treatment centers, including free-standing hemodialysis units, ambulatory surgical facilities, health maintenance organizations, community-based residential facilities that are certified as medical assistance providers under s. 49.45 (16) or that otherwise meet the requirements for certification, home health agencies and other comparable facilities. "Health care institutions" do not include facilities operated solely as part of the practice of an independent practitioner, partnership, unincorporated medical group or service corporation as defined in s. 180.99.

(7) "Health maintenance organization" means a public or private organization organized under the laws of this state which provides or otherwise makes available to enrolled partici-

pants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services and out-of-area coverage; is compensated (except for co-payments) for the provision of the basic health care services to enrolled participants on a predetermined periodic rate basis; and provides physicians' services primarily directly through physicians who are either employes or partners of the organization, or through arrangements with individual physicians or one or more groups of physicians, organized on a group practice or individual practice basis.

(8) "Home health agency" means an organization which offers a program of 2 or more health services in a client's residence or other community setting to people of all ages. Such services may include physician services, nursing services, physical therapy services, occupational therapy services, speech pathology services, home health aid-homemaker services, medically related social services, nutrition counseling services, laboratory services and medical supplies and equipment.

(9) "Hospital" has the meaning ascribed in s. 50.33 (1) but excluding those facilities exempted by s. 50.39 (3).

(10) "Nursing home" has the meaning provided in s. 50.01 (3).

(11) "State health planning and development agency" means the department, as designated under s. 140.82 (1).

(12) "Statewide health coordinating council" means the health policy council, as designated under s. 14.25.

(13) "Substate health planning agency" means a public or private nonprofit agency

which has been designated as a health systems agency under 42 USC 300L.

History: 1977 c. 29; 1979 c. 124, 221; 1981 c. 20.

150.002 Liability limited. No officer, board member, employe or agent of the department or a substate health planning agency, nor any state employe, may incur personal liability for any action taken in good faith within such person's authority under law for the purpose of carrying out this chapter.

History: 1977 c. 29.

150.003 Rule-making authority. The department may promulgate rules for the administration of this chapter and set standards by rule to carry out this chapter.

History: 1977 c. 29.

150.004 Injunctions. Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, maintain an action in the name of the state in the circuit court for injunction or other process against any person to restrain or enjoin the violation of this chapter or rules adopted under this chapter.

History: 1977 c. 29; 1981 c. 20.

SUBCHAPTER II

CERTIFICATE OF NEED

NOTE: Chapter 29, laws of 1977, s. 1624e, as amended by ch. 20, laws of 1981, s. 1841, provides that subch. II, as created by ch. 29, terminates on June 30, 1983, or the general effective date of the 1983-85 biennial budget act, whichever occurs later.

150.01 Definitions. In this subchapter:

(1) (a) "Capital expenditure" means an expenditure by or on behalf of a health care institution which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which exceeds \$150,000 if health-related or \$164,000 if nonhealth-related. "Nonhealth-related expenditures" means expenditures for parking facilities; alteration or addition of plumbing, heating, cooling or electrical systems; and projects limited to nonpatient areas, such as gift shops, public waiting areas, cafeterias, dietary departments, central supply, maintenance, storage areas, medical libraries, chapels, laundries, housekeeping departments, medical records, classrooms, meeting rooms, administrative offices and such other projects as the department determines, by rule, to be nonhealth-related.

(b) The cost, if \$150,000 or less, of the studies, surveys, designs, plans, working draw-

ings, specifications and other activities essential to the acquisition, improvement, expansion or replacement of the plant and equipment with respect to which the capital expenditure is made shall be included in determining the amount of the capital expenditure. Transactions which are separated in time but are components of an overall plan for meeting patient care objectives shall, for purposes of this subsection, be viewed in their entirety without regard to their timing.

(c) The cost of predevelopment activities shall be included in determining the amount of the capital expenditure.

(1m) "Certificate of need" means a written authorization by the department for a person to implement the project under review, specifying a maximum capital expenditure that may be obligated under the certificate.

(2) "Health services" mean clinically related services, including but not limited to diagnostic, treatment, rehabilitative, alcohol, drug abuse and mental health services.

(3) "Institutional health services" mean health services provided in or through health care institutions and includes the entities in or through which services are provided, and that incur an annual operating cost of \$75,000 or more.

(4) "Obligation" means any enforceable contract which is entered into for the construction, leasing, acquisition or permanent financing of a capital asset. In this subsection, "acquisition" includes a change in ownership.

(5) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state, or a political subdivision or instrumentality (including a municipal corporation) of a state.

(5m) (a) "Predevelopment activity" means:

1. Any activity involving an expenditure by or on behalf of a health care institution in excess of \$150,000, in preparation for the offering or the development of a project subject to review under s. 150.02; or

2. Any arrangement or commitment by or on behalf of a health care institution that is made to finance the offering or development of a project subject to review under s. 150.02.

(b) "Predevelopment activity" does not include:

1. Any health maintenance organization feasibility survey funded under 42 USC 300e-2, in effect on April 30, 1980; or

2. Any planning project for a health maintenance organization funded under 42 USC 300e-3, in effect on April 30, 1980.

(6) "Substantial and continuing progress" means adherence to the applicant's proposed

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timetable, as approved by the department under s. 150.10.

(7) "Substantial change in health service" means the offering of a health service which was not offered on a regular basis in or through such a health care institution or health maintenance organization within the 12-month period prior to the time the services would be offered. "Substantial change in a health service" also means the deletion or substantial change in the scope or type of an existing health service provided by the health care institution or health maintenance organization.

(8) "To offer" when used in connection with health services, means that the health care institution holds itself out as capable of providing, or as having the means for the provision of, specified health services.

History: 1977 c. 29, 418; 1979 c. 34, 221; 1981 c. 20.

150.02 Applicability. (1) This subchapter applies without limitation to all persons who intend to engage in any of the following activities by or on behalf of a health care institution:

(a) The lease, construction or purchase of a health care institution.

(b) A substantial change in health service.

(c) A change in bed capacity, not including temporary increases in bed capacity, except that transfers of beds between services which do not involve specialized services are exempt unless the transfer involves more than 10 beds or more than 10% of the institution's capacity, whichever is less, over a 2-year period.

(d) An expenditure, not covered by par. (b), of more than \$150,000 for a single piece of clinical equipment, or of more than \$164,000 for 2 or more pieces of related clinical equipment, if there is an expenditure for one of the pieces of more than \$100,000. Two or more pieces of clinical equipment that can perform their normal functions only when used simultaneously or when connected to each other constitute a single piece of equipment for purposes of this subsection. Pieces of equipment are related if the diagnostic or therapeutic services provided with the equipment are normally provided to the same individual as a clinical service.

(e) Any capital expenditure not covered by pars. (a) to (d).

(f) Any predevelopment activity.

(2) This subchapter also applies without limitation to all persons who intend to engage in any of the following activities by or on behalf of an independent practitioner, partnership, unincorporated medical group or service group as defined in s. 180.99:

(a) An expenditure for a single piece of clinical equipment of more than \$150,000, or

(b) An expenditure for clinical equipment which exceeds \$164,000 for 2 or more pieces of related equipment, if there is an expenditure for one of the pieces of more than \$100,000. Two or more pieces of clinical equipment that can perform their normal functions only when used simultaneously or when connected to each other constitute a single piece of equipment for purposes of this subsection. Pieces of equipment are related if the diagnostic or therapeutic services provided with the equipment are normally provided to the same individual as a clinical service.

(3) No person may divide a project to avoid the requirements of this subchapter. When any person acquires under a lease or comparable arrangement, or through donation, any health facility or part thereof, equipment for a facility or clinical equipment which would have been subject to this subchapter had it been purchased, that acquisition is subject to this subchapter.

(4) The department shall, if permitted by the secretary of health and human services, exempt from the formal review requirements, projects which meet the criteria listed below. All requests for such a nonsubstantive review by the applicant or the substate health planning agency must be made in writing to the department. The department, after consultation with the appropriate substate health planning agency, shall make a determination within 15 days after receipt of a written request. The department shall issue a certificate on all approved projects declared nonsubstantive within 20 days of this determination. A project which is determined to be subject to review shall be declared nonsubstantive if it meets one of the following criteria:

(a) A one-time capital expenditure of less than \$10,000.

(b) Capital expenditure projects developed pursuant to a plan of correction for code deficiencies previously approved by the department.

(c) Capital expenditure projects which are required to remedy an emergency situation detected not more than 30 days prior to the request for a nonsubstantive review determination and which threatens the safety of patients or the ability of the institution to remain in operation.

(d) Replacement of clinical equipment with equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan.

(e) Predevelopment activities.

(5) The department may promulgate by rule additional criteria which, if approved by the secretary of health and human services, may be used to declare a project nonsubstantive.

(6) A project that has received a certificate of need is subject to additional review for the amount exceeding the maximum capital

expenditure if the department expects the excess amount to be:

(a) More than \$150,000 for any project under \$1,500,000;

(b) More than 10% of the project's cost for any project between \$1,500,000 and \$5,000,000; or

(c) More than \$500,000 for projects over \$5,000,000.

(7) This subchapter does not apply to any residential facility, as defined in s. 46.28 (1) (d).

History: 1977 c. 29; 1979 c. 34; 1981 c. 20, 298.

150.025 Exemptions. (1) If the department grants an exemption under sub. (2), a certificate of need is not required to offer any inpatient institutional health service, to acquire clinical equipment or to incur an obligation of a capital expenditure in order to provide an inpatient institutional health service in any of the following situations:

(a) By any health maintenance organization or combination of health maintenance organizations in which at least 50,000 persons, residing in the service area, are enrolled, if:

1. The facility in which the service will be provided is reasonably accessible to these persons; and

2. The department reasonably expects that these persons will constitute at least 75% of the persons using the service.

(b) By any health care institution that primarily provides inpatient health services or will primarily provide inpatient health services, if any health maintenance organization or combination of health maintenance organizations:

1. Controls or will control the health care institution; and

2. Meets the requirements listed in par. (a).

(c) By any health care institution or part of a health care institution, if any health maintenance organization or combination of health maintenance organizations:

1. Leases or will lease the health care institution and at least 15 years remain before the lease expires; and

2. Meets the requirements listed in par. (a).

(2) The department shall grant an exemption from the certificate of need requirements if:

(a) It receives an application for exemption within the time limits and in the form the department prescribes;

(b) The applicant submits a copy of the application required under par. (a) to the appropriate substate health planning agency and the department receives comments from the substate health planning agency; and

(c) The application contains all the information the department needs to determine if the

requirements of sub. (1) are met. The department may grant an exemption to a health care institution or part of a health care institution that has not begun to provide institutional health services on the date the application is submitted, if the health care institution meets the requirements listed in sub. (1) (b) or (c) on the date it begins to provide the institutional health service.

(3) No person who has received an exemption under sub. (1) may convey a controlling interest in the project exempted, unless:

(a) The department issues a certificate of need approving the conveyance; or

(b) The department determines, upon application, that:

1. A health maintenance organization or combination of health maintenance organizations, meeting the requirements listed in sub. (1) (a), is acquiring the controlling interest; or

2. The interest being acquired is in a health care institution that primarily provides or will provide inpatient health services and the interest is being acquired by a health maintenance organization or combination of health maintenance organizations in which at least 50,000 persons, residing in the service area, are enrolled.

(4) A health maintenance organization, or an ambulatory surgical facility or health care institution controlled by a health maintenance organization or combination of health maintenance organizations is only required to obtain a certificate of need prior to offering inpatient institutional health services, acquiring clinical equipment whose cost exceeds the limits stated in s. 150.02 (1) (d) or incurring an obligation of capital expenditures in order to offer inpatient institutional health services. If the offering, acquisition or obligation is exempt under sub. (1), this subsection does not require a certificate of need.

(5) (a) The department shall approve an application for a certificate of need from any health maintenance organization or from a health care institution that is controlled by a health maintenance organization, if:

1. Approval is necessary to meet the needs of members of the health maintenance organization and of members that can reasonably be expected to enroll; and

2. The health maintenance organization is unable to provide reasonable and cost effective institutional health services on a long-term basis, in a manner consistent with the basic operation of the organization.

(b) Section 150.07 does not apply to certificate of need applications under this subsection.

(6) (a) The department may refuse to issue a certificate of need for any of the following capital expenditures only if the project is not needed or if the project is inconsistent with either the state health plan or a plan developed under s. 150.055 (3) (b):

1. To eliminate or prevent imminent code violations or safety hazards, submitted under s. 150.02 (4) (b) or (c).

2. To comply with licensing requirements under subch. I or II of ch. 50.

3. To comply with any accreditation standards that are prerequisite to receiving federal health insurance payments for the aged and disabled under 42 USC 1395 to 1395rr, federal medical assistance payments under 42 USC 1396 to 1396k or state medical assistance payments under ss. 49.43 to 49.495.

(b) Section 150.07 does not apply to certificate of need applications under this subsection.

(7) Any person intending to acquire an existing health care institution shall notify the department in writing of this intent at least 30 days before contracting to acquire the institution. The notice shall state the services to be offered in the institution and the institution's bed capacity. No certificate of need is required to acquire the institution unless the department makes a written finding, within 30 days after receiving notice of the intent to acquire, that the acquisition will change the services offered or the institution's bed capacity.

(8) The department shall, by rule, specify the method by which to determine if a health care institution is or will be primarily providing inpatient health services or is or will be controlled or leased by a health maintenance organization under sub. (1) (b) or (c).

History: 1981 c. 20.

150.03 Compliance required for licensing and approval. No license may be issued or renewed nor may approval be granted for any health care institution which fails to comply with this subchapter.

History: 1977 c. 29.

150.035 Projects operating without a certificate of need. Depreciation, interest or principal repayments and all operating expenses associated with any project subject to review under s. 150.02, but which has no certificate of need, may not be recovered through the charges or rates of the health care institution. No payer may recognize or pay these costs.

History: 1981 c. 20.

150.04 Notice of intent requirement. Except as provided in this section, any person intending to undertake a project subject to this

subchapter must submit a notice of intent to the department and the appropriate substate health planning agency prior to the submission of an application for a certificate of need. Applications submitted under s. 150.02 (4) (c) and (e) are exempt from this requirement. The department, by rule, shall establish the form and content of a notice of intent and the length of any waiting period between the submission of a notice of intent and the submission of an application.

History: 1977 c. 29; 1979 c. 34.

150.05 Certificate of need requirement.

(1) No person may enter into an obligation in support of a project described in s. 150.02 or engage in activities described in that section unless the obligation or activities are authorized by a valid certificate of need. The department may grant a certificate of need that permits only predevelopment activities, but that does not authorize the offering or development of the project with respect to which the predevelopment activities are proposed.

(2) The department shall prescribe the form to be used in applying for certificates of need and for applying for renewal, modification or amendment. The department shall consult with the substate health planning agencies and appropriate governmental and affected parties prior to prescribing the form of the application. A statement of the applicable rules and procedures to be followed in the review of an application shall be issued with each application form. The department may require no information under this section which is not prescribed and published as being required information.

(3) No person may apply for a certificate of need unless that person submits proof of consultation with the substate health planning agency for the area in which the project is to be located relative to need for the project, including plans, specifications and design of the project. It is the responsibility of the substate health planning agency within the area the project is to be located to notify other agencies potentially impacted by the proposed project. Proof of such consultation shall be submitted in a form prescribed by rule by the department.

(4) An application for a certificate of need shall be filed jointly with the department and the appropriate substate health planning agency.

History: 1977 c. 29; 1979 c. 34; 1981 c. 20.

150.055 Moratorium on major construction applications. (1) Neither the department nor any substate health planning agency may accept any application for a certificate of need submitted by or on behalf of a hospital for a lease, any construction, purchase or the provi-

sion of a new service that requires a capital expenditure exceeding \$1,000,000, prior to July 1, 1983, or the enactment of the 1983-85 biennial budget bill, whichever occurs later.

(2) Neither the department nor any substate health planning agency may accept any application for a certificate of need submitted by or on behalf of a nursing home for a lease, any construction or the purchase of a nursing home or the addition of nursing home beds, prior to July 1, 1983, or the enactment of the 1983-85 biennial budget bill, whichever occurs later.

(3) (a) The department shall submit to the joint committee on finance for review and recommendation to the legislature, by February 1, 1983, a postmoratorium planning system which includes review standards proposed under this chapter. This state plan shall include proposals for recommended statutory changes as well as rule changes necessary to carry out the intent of the plan recommended by the department.

(b) The state plan shall be subject to review and comment by substate health planning agencies and by the health policy council prior to submission to the joint committee on finance. The department shall consider substate health planning agency plans, which shall be developed with substantial input from a broad array of affected persons, as part of its postmoratorium planning program.

(4) This section does not apply to:

(a) A project that is required to remedy an emergency that threatens the safety of any patient.

(b) An application for an expected increase in the estimated cost of a previously approved project which is covered under s. 150.02 (6) if the original scope of the project does not change.

(c) A project that both the department and the substate health planning agency agree has no significant financial impact on the hospital or nursing home and little or no impact on the delivery of health services in the planning area.

(d) A project for which both the department and the substate health planning agency find a compelling interest.

(e) A project developed pursuant to a plan of correction only for code deficiencies the department previously approved if the project includes no addition of beds.

(f) A project a nursing home develops to decrease the number of beds in the home if no capital expenditure is involved.

(g) Any lease, construction or purchase required due to the replacement of clinical equipment by a hospital.

History: 1981 c. 20.

150.06 Review process. (1) The appropriate substate health planning agency shall review

each application for a certificate of need in accord with standards and procedures established under s. 150.07, and for consistency with locally developed plans and standards, and shall submit its comments thereon to the department within 60 days after date of notification. "Date of notification" is that date on which the department publishes notice of the receipt of an application and the proposed period for review in a newspaper of general circulation. The comments may include a recommendation to approve the application without modifications, to approve the application subject to specified modifications or to reject the application. Suggested modifications, if any, shall relate directly to the project under review.

(2) (a) The appropriate substate health planning agency shall, during the course of its review, provide an opportunity for a public meeting at which interested persons may introduce testimony and exhibits. Public meetings required by this subsection shall be conducted according to rules promulgated by the department.

(b) Any interested person may file written comments and exhibits concerning a proposal under review with the appropriate substate health planning agency and the department.

(c) For the purposes of this subchapter, the department is exempt from the requirements of s. 227.064.

(3) The department shall, except as provided in sub. (4) and s. 150.066, issue a certificate of need with or without any specified modifications or reject the application within 30 days after receiving the comments on the application from the substate health planning agency. If the department fails to act within such period, the applicant may bring an action in the circuit court for Dane county to require the department to act. The department may not issue a certificate of need subject to any condition unless the condition directly relates to the criteria established under s. 150.07. Modifications shall relate directly to the project and may not constitute conditional approval based on the addition, alteration or termination of other services or facilities provided by the health care institution requesting the certificate.

(4) If the decision by the department contradicts the recommendations of the substate health planning agency, the department shall issue a certificate of need 30 days after notification of approval has been given, if no appeal has been made under s. 150.09. The department may promulgate by rule criteria by which certificates of need for contested cases will be withheld for 30 days to permit appeals to be made under s. 150.09.

History: 1977 c. 29; 1979 c. 32 s. 92 (1); 1981 c. 20.

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150.065 Extended review. The department shall promulgate rules establishing criteria for determining when it would not be practicable to complete a review within 90 days from the date of notification. If the department finds that these criteria are met for a particular project, it shall extend the review period for a period not to exceed 60 days, except with the consent of the applicant, and provide notice of such extension to all affected persons. The time limitations in s. 150.06 shall be modified accordingly.

History: 1977 c. 29; 1981 c. 20.

150.066 Grouping applications for concurrent review. (1) At least twice each year, the department shall group certificate of need applications for concurrent review, using the following criteria:

(a) The department shall concurrently review applications for similar health services, clinical equipment or capital expenditures that are proposed within the same planning area of a substate health planning agency.

(b) After consulting with the substate health planning agency, the department shall concurrently review the following types of applications, located within the same planning area:

1. Proposals to lease, construct or purchase any health care institution licensed under ch. 50.

2. Proposals to lease, construct or purchase any hospital.

3. Proposals to establish any home health agency.

4. Proposals for similar health services, clinical equipment or capital expenditures if concurrent review reduces costs and improves the future delivery of health services within the planning area and if the dates on which notices of intent are filed under s. 150.04 permit the department to adjust the review cycle, allowing concurrent review.

5. Proposals to change bed capacity, as defined in s. 150.02 (1) (c).

(2) If the department is unable to review grouped applications concurrently because of time cycle constraints under s. 150.06, the department, in consultation with the substate health planning agency for the area in which the projects are proposed, may extend the review period of any application for up to 60 days to permit concurrent review of the grouped applications.

(3) (a) This section does not apply to applications for nonsubstantive projects submitted under s. 150.02 (4) or (5).

(b) The department is not required to group applications submitted under s. 150.025 (6) for concurrent review.

History: 1981 c. 20.

150.067 Findings. The department shall, within 15 days after it approves or rejects an application under s. 150.02, provide in writing to the applicant, to the appropriate substate health planning agency and, upon request, to affected persons the findings and conclusions on which it based its decision, including but not limited to the criteria under s. 150.07 used by the department in making such decision.

History: 1977 c. 29.

150.07 Review criteria and standards.

(1) The department shall by rule promulgate and utilize, as appropriate, specific criteria for conducting its reviews under this subchapter including but not limited to the following general considerations:

(a) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted under section 1513 (b) (2) and (3), respectively, of P.L. 93-641.

(b) The relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services.

(c) The need that the population served or to be served by the services has for the services.

(d) The availability of less costly or more effective alternative methods of providing the services.

(e) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

(f) The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

(g) The availability of resources, including but not limited to health manpower, management personnel, and funds for capital and operating needs for the provision of the services proposed to be provided and the availability of alternative uses of those resources for the provision of other health services.

(h) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(i) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service area in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(j) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the public health services act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(k) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(L) In the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project.

(m) The impact on health professional training programs in the area to be served.

(n) The effect of competition on the supply of the health services being reviewed.

(o) Improvements or innovations in the financing of health services that foster competition and reduce the cost of the services.

(p) Improvements or innovations in the delivery of health services that improve the quality and reduce the cost of the services.

(q) The effect of construction projects on the cost of health services provided by the applicant and by other institutions.

(r) The extent to which the project improves the quality of existing services.

(s) The extent to which the project contributes to the appropriateness of existing services.

(t) The need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients.

(2) Each substate health planning agency shall adopt and utilize as appropriate specific criteria for conducting its reviews under this subchapter, including but not limited to the general considerations specified in sub. (1) (a) to (t).

(3) All standards established by the department shall distinguish between rural, urban and metropolitan areas as defined by population density to the extent that variable standards will benefit the development of the most appropriate health care system for the service area. All such standards shall be subject to review and comment by substate health planning agencies, public meetings in each substate health planning

area, and review by the statewide health coordinating council prior to use in reviewing certificate of need applications.

(4) Before issuing a certificate of need, the department shall consider, in accordance with the appropriate criteria of sub. (1), the need for health care institutions, services related thereto and clinical equipment as projected in various state plans prepared annually by substate health planning agencies and state agencies, including but not limited to the medical facilities construction and modernization program, mental health centers plan, programs for facilities and services for the mentally retarded, rehabilitation services program, the alcoholic and drug abuse programs, and special studies, surveys and information. Information submitted by a religious organization in support of its application, demonstrating a desire on the part of persons in the area to be served by the facility to be cared for in an institution sponsored by that particular religious organization, shall be a significant consideration in determining the need for that facility. This information may consist of waiting lists substantiated by verified applications for admission to the institution, surveys and any other forms of information which the state health planning and development agency requires.

History: 1977 c. 29; 1979 c. 221 s. 2200 (20); 1981 c. 20 ss. 1465, 2202 (20) (h); 1981 c. 390 s. 252.

150.08 Forfeiture. Any person who violates this subchapter or any rule adopted under this subchapter shall forfeit not less than \$100 nor more than \$1,000 for each such offense. Each day of violation constitutes a separate offense.

History: 1977 c. 29.

150.085 Rehearing. Any adversely affected person may request a rehearing under s. 227.12 on the basis of the grounds specified in s. 227.12 (3) or such other grounds as the department may specify by rule.

History: 1977 c. 29; 1981 c. 20.

150.09 Appeals. The department shall promulgate rules establishing procedures by which any person adversely affected by a decision of the department with respect to a certificate of need application may appeal the decision. The procedures shall include an opportunity for an appeal to an independent hearing officer, appointed by the governor under s. 753.075 (3). The department and the adversely affected person may agree to waive the appeal to the independent hearing officer and the parties may seek judicial review. In an appeal of a decision to deny a certificate of need, the department shall bear the burden of proving that the project fails

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to meet the criteria specified in its written findings under s. 150.067. In an appeal of a decision to grant a certificate of need, the person appealing that decision must prove that the project fails to meet such criteria. The appeals shall be conducted in the manner described in s. 227.20, except that findings, conclusions and the decision resulting from the hearing shall, to the extent the determinations of the department are reversed or modified, constitute the determinations of the department.

History: 1977 c. 29; 1977 c. 187 s. 135; 1981 c. 20.

150.10 Term of certificate; requirements; report. (1) A new, modified or amended certificate of need is valid for a period of one year from the date of issuance and may be renewed one or more times for periods of up to one year only if evidence of substantial and continuing progress on the project is submitted. The department may establish rules to assure timely completion of the project.

(2) The department shall specify the maximum capital expenditure that may be obligated for each project.

(3) The application shall include the applicant's proposed timetable for implementing and completing the project, breaking the project into separately identifiable stages of completion. The timetable shall also specify the time the proposed service, clinical equipment or capital expenditure project will become available for use.

(4) Any holder of a certificate of need shall, at least once each year, provide written documentation to the department and to the substate health planning agency that the holder is meeting the timetable for completion. The written documentation shall:

(a) Identify the project and the certificate holder;

(b) Specify the date of issuance of the certificate;

(c) Describe the stages of the project that are completed;

(d) Report on the project's status;

(e) Explain any deficiencies;

(f) Identify any cost overruns and estimate potential cost overruns within the following year; and

(g) Estimate the date that uncompleted stages of the project will be completed, if the project is not meeting the submitted timetable.

(5) Each holder of a certificate of need shall notify the department in writing prior to the

date the timetable specifies completion of any stage of the project, if action to begin the stage does not start as scheduled or if the stage will not be completed as scheduled in the timetable.

History: 1977 c. 29; 1981 c. 20, 391.

150.11 Withdrawing certificates of need.

(1) The department may withdraw a certificate of need if:

(a) The holder fails to obligate the specified capital expenditures within one year;

(b) The holder fails, within one year following the date of obligation, to obtain financing and initiate substantial construction. "Substantial construction" means spending at least 20% of the project's cost; or

(c) After reviewing the project the department concludes that the holder is not meeting the deadlines in the timetable and is not making a good faith effort to meet the timetable.

(2) The department may withdraw a certificate of need only after providing a report of its review, including the cause for the withdrawal of the certificate, to the applicant and to the substate health planning agency and after receiving recommendations from the substate health planning agency regarding the withdrawal.

(3) The department shall notify the holder of the certificate, the substate health planning agency and the public in writing of any impending action to withdraw the certificate.

(4) The holder of the certificate of need may contest the decision of the department to withdraw the certificate through a hearing under s. 227.07.

History: 1981 c. 20.

150.12 Fees. Persons applying for certificates of need shall pay application fees according to the schedule in this section.

(1) (a) No fee may be charged for any nonsubstantive project under s. 150.02 (4) or (5).

(b) Notwithstanding par. (a), the department may charge an application fee for nonsubstantive review of project cost overruns. The total amount of application fees for the project may not exceed \$37,000.

(2) For all other expenditures the fee shall be 0.37% of the estimated project cost with a maximum fee of \$37,000 and a minimum fee of \$200.

History: 1977 c. 29, 203; 1979 c. 34, 221.