

## CR 10-005

### ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue adopts an order to: **create** Tax 1.17; **relating to** the ambulatory surgical center assessment.

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#### *Analysis by the Department of Revenue*

**Statutes interpreted:** ss. 146.98 and 20.566 (1) (gn), Stats.

**Statutory authority:** ss. 146.98 (3), (4), and (5) and 227.24 Stats.

**Related statute or rule:** section 50.38, Stats., imposes a hospital assessment, and s. 50.14, Stats., imposes an assessment on licensed nursing home beds and intermediate care facilities for the mentally retarded (ICF-MR).

**Plain language analysis:** This rule does the following:

- Establishes the requirements for administration of the ambulatory surgical center assessment.
- Describes how the amount of the assessment for each ambulatory surgical center is determined.
- Details how the department will collect assessments.
- Provides guidance regarding data required to be submitted to the department to determine assessment amounts.
- Specifies the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

**Summary of, and comparison with, existing or proposed federal regulation:** Federal law 42 CFR §433.68 describes permissible health care-related taxes that states may impose without a reduction in Medicaid Federal Financial Participation (FFP) in the medical assistance program jointly funded by the federal government and the state. The taxes must be broad based, uniformly imposed throughout a jurisdiction, and cannot exceed 5.5% of revenues. Ambulatory surgical center or ASC is defined in 42 CFR §416.2 as “any distinct entity that operates for the purposes of providing surgical services to patients not requiring hospitalization, has an agreement with the Center for Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C of this part.”

#### **Comparison with rules in adjacent states:**

Illinois imposes health care provider taxes on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, and nursing homes. There is no assessment of ambulatory surgical centers.

Iowa imposes a health care provider tax on intermediate care facilities for the mentally retarded or developmentally disabled. There is no assessment on ambulatory surgical centers.

Michigan imposes a health care provider tax on hospitals, managed care organizations, nursing homes and community mental health programs. There is no assessment on ambulatory surgical centers.

Minnesota imposes a health care provider tax on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, managed care organizations, and nursing homes. In addition, a tax of 2% of total gross receipts is imposed on surgical centers.

**Summary of factual data and analytical methodologies:** 2009 Wisconsin Act 28 created s. 146.98 Stats., imposing an assessment on Medicare-certified ambulatory surgical centers in Wisconsin. The statute directs the department of revenue to allocate any assessment imposed among ambulatory surgical centers in proportion to their gross patient revenue. The department may determine the amount of the assessment, collect the assessment, require ambulatory surgical centers to provide any data that is required to determine assessment amounts, establish deadlines by which assessments shall be paid, and impose penalties for failure to comply with the requirements of the statute or any rules promulgated. The department is directed to transfer 99.5 percent of the assessments collected to the medical assistance trust fund and retain 0.5% of the assessment revenues collected to support the administrative costs related to the assessment.

Within the provisions of s. 146.98 (5), Stats., is a requirement that the department promulgate rules for the administration of the assessment.

In consultation with ambulatory surgical centers, the departments of administration and health services, the department has created this rule order to satisfy the above requirements.

**Analysis and supporting documents used to determine effect on small business:** This rule is created in accordance with 2009 Wisconsin Act 28 to administer and enforce statutory requirements relating to the assessment of ambulatory surgical centers. As the rule does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

**Anticipated costs incurred by private sector:** This rule does not have a significant fiscal effect on the private sector.

**Effect on small business:** This rule does not have a significant effect on small business.

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this rule.

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**SECTION 1.** Tax 1.17 is created to read:

**Tax 1.17 Ambulatory surgical center assessment. (1) PURPOSE.** The purpose of this section is to establish procedures and other requirements necessary for levying and collecting the ambulatory surgical center assessment imposed under s. 146.98, Stats.

**(2) DEFINITIONS.** In this section:

(a) "Ambulatory surgical center" has the meaning given in s. 146.98 (1), Stats.

(b) "Cash basis" is the method of accounting where income is reported in the year that it is actually or constructively received in the form of cash or its equivalent or other property.

(c) "Department" means the department of revenue.

(d) "Gross patient revenue" means the gross amount received on a cash basis by the ambulatory surgical center from all patient services.

(e) "Patient services" include any of the following goods and services provided to a patient or consumer:

1. Bed and board.
2. Nursing services and other related services.
3. Use of the ambulatory surgical center.
4. Medical social services.
5. Drugs, biologicals, supplies, appliances and equipment.
6. Other diagnostic or therapeutic items or services.
7. Medical or surgical services.
8. Laboratory services.
9. Items and services furnished to ambulatory patients not requiring emergency

care.

10. Emergency services including ambulance services.

**(3) REGISTRATION.** (a) Ambulatory surgical centers in this state shall register with the department, in the manner prescribed by the department.

(b) On or before January 1, ambulatory surgical centers in this state shall notify the department of a change in ownership, address change; the date the ambulatory surgical center commences or ceases operations, and any other information pertinent to the ambulatory surgical center's assessment under s. 146.98, Stats., occurring in the previous calendar year. The department may register or modify registration for an ambulatory surgical center based on the information provided under this paragraph.

(c) The department may register or modify registration for an ambulatory surgical center based on information specified in par. (b) received from the department of health services.

**(4) ANNUAL GROSS PATIENT REVENUE SURVEY.** (a) The department shall annually survey ambulatory surgical centers required to be registered under sub. (3) (a) to obtain any data required by the department to administer the assessment imposed in s. 146.98, Stats. Survey data filed shall be subject to the confidentiality provisions under s. 71.78, Stats.

(b) Ambulatory surgical centers shall electronically file the survey annually on or before March 15.

(c) Ambulatory surgical centers may apply for a 5 day extension of the survey due date. An extension will be granted for good cause only. The application for an extension shall be filed electronically with the department on or before March 15 at <https://tap.revenue.wi.gov>.

(d) Failure to electronically file the survey with the department by the due date, including any extension, shall result in a late filing penalty of \$500 per day calculated from the day after the unextended due date up to, but not including, the date the completed

survey is received by the department, or April 1, whichever is earlier. Failure to file the survey during the period for the extension shall make the extension null and void.

**Examples: 1)** An ambulatory surgical center does not request an extension to file the annual survey and fails to file the survey by April 1, 2010. A daily \$500 late filing penalty is assessed for the period of March 16, 2010 through March 31, 2010, for a total late filing penalty of \$8,000.

**2)** An ambulatory surgical center is granted an extension, and files the annual survey on March 19, 2010. No late filing penalty is assessed.

**3)** An ambulatory surgical center is granted an extension to file the annual survey, but files the survey on March 24, 2010, after the expiration of the 5 day extension. A \$4,000 late filing penalty is assessed for the period of March 16, 2010 through March 23, 2010.

(e) If an ambulatory surgical center fails to file the survey by April 1, or files an incomplete or incorrect survey, the department shall impose the assessment based upon the information in the department's possession and according to its best judgment. This may include the use of data received from the ambulatory surgical center for prior periods.

(f) A penalty of 25% of the amount of the assessment may be added to an assessment imposed under par. (e), if the ambulatory surgical center fails to file a survey by April 1, pursuant to s. 146.98 (3) (e), Stats.

(g) An ambulatory surgical center may electronically file an amended survey to modify previously filed survey information. The deadline for filing an amended survey is April 1.

**(5) ASSESSMENT.** (a) The assessment shall be calculated using a uniform percentage that satisfies the requirements under 42 CFR 433.68 for collecting an assessment without incurring a reduction in federal financial participation under the federal Medicaid program.

(b) The department shall electronically notify an ambulatory surgical center of the amount of the assessment on April 15.

(c) The assessment shall be paid electronically on or before June 1 of each year in a manner prescribed by the department.

(d) At the discretion of the department, an ambulatory surgical center that is unable to timely pay the assessment due June 1, 2010, may be granted an extension of the due date to June 22, 2010. This extension is only available for the payment that is due June 1, 2010. A determination by the department to not grant an extension is final and is not subject to review under ch. 227, Stats.

(e) Failure to pay the assessment by the due date, including any extension, shall result in a penalty of \$500 per day calculated from the day after the due date up to, but not including, the date the assessment is received by the department, subject to a maximum penalty equal to the amount of the assessment. Payment of the penalty under this paragraph does not relieve the ambulatory surgical center from the responsibility of paying the assessment.

(f) The department may require estimated pre-payment of the assessment, in a manner prescribed by the department. The department shall notify ambulatory surgical centers at least 90 days before the first estimated pre-payment is due.

**(6) AUDIT.** (a) The department may conduct an office or field audit to determine the assessment under s. 146.98, Stats., or to ascertain the correctness of the information reported on the annual survey required to be filed under sub. (4) (b).

(b) Ambulatory surgical centers shall retain financial books and records that support the information reported on the annual survey, for a minimum period of four years after the March 15 due date of the survey required to be filed under sub. (4) (b), and provide it to the department pursuant to s. 146.98 (3) (c), Stats., if requested.

(c) The department may impose a penalty equal to the amount of any unreported gross patient revenue multiplied by the percentage established for that period in sub. (5) (a).

**(7) APPEALS.** Ambulatory surgical centers claiming to be adversely affected by the department's action or inaction, other than a rulemaking action or proposal for legislation, may petition the department for a contested case hearing under s. 227.42, Stats. The request for hearing shall be in writing and served upon the secretary of revenue within 30 days after the department's action or inaction as stated in the petition.

**Note:** Written requests for hearing should be addressed to: Wisconsin Department of Revenue, Office of the Secretary, P.O. Box 8933, Madison, WI 53708.

**(8) COLLECTIONS.** (a) Assessments under sub. (5) (c) are considered delinquent if not paid when due, unless the department receives a request for hearing under sub. (7).

(b) The department may immediately proceed to collect delinquent assessments, including any penalties, in a manner comparable to that described in s. 77.62, Stats.

(c) Assessments unpaid for more than 90 days after appeal rights have expired shall be posted on the list on the Internet site maintained by the department under s. 73.03 (62), Stats.

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The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

### **Final Regulatory Flexibility Analysis**

This rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Roger M. Ervin  
Secretary of Revenue