CHAPTER 150

REGULATION OF HEALTH SERVICES

SUBCHAPTER I
DEFINITIONS AND GENERAL PROVISIONS
150.01 Definitions.
150.03 Rule making; forms.
150.05 Actions in circuit court.
150.09 Staff.
150.11 Enforcement.
150.13 Fees.
SUBCHAPTER II
RESOURCE ALLOCATION PROGRAM; LONG-TERM CARE
150.21 Applicability.
150.27 Per diem capital rates.
150.29 Approval requirement.
150.31 Statewide bed limit.
150.32 Distinct-part facilities primarily serving the developmentally disabled.
150.33 Applications for available beds.
150.34 Other applications.
150.345 Nursing home bed transfers.
150.35 Review procedures.
150.39 Review criteria and standards.
150.40 Redistribution of closed beds.
150.401 Redistribution of nursing home beds to replace transferred beds.
150.41 Approvals not transferable.
150.43 Judicial review.
150.45 Validity of an approval.
150.46 Exceptions.
SUBCHAPTER IV
HEALTH CARE COOPERATIVE AGREEMENTS
150.84 Definitions.
150.85 Certificate of public advantage.
150.86 Judicial review.
SUBCHAPTER VI
MORATORIUM ON CONSTRUCTION OF HOSPITAL BEDS
150.93 Moratorium on construction of hospital beds.
SUBCHAPTER VII
PSYCHIATRIC OR CHEMICAL DEPENDENCY BED LIMITATIONS
150.94 Definitions.
150.95 Moratorium.
150.951 Exceptions.
SUBCHAPTER VIII
FACILITIES FOR THE INTELLECTUALLY DISABLED AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION
150.96 Definitions.
150.963 Construction of facilities for the intellectually disabled and community mental health centers.
150.965 Construction programs.
150.967 State plans.
150.97 Standards for maintenance and operation.
150.973 Priority of projects.
150.975 Applications.
150.977 Hearing; forwarding of applications.
150.98 Inspection of projects.
150.983 Facilities for individuals with an intellectual disability and community mental health centers construction funds.

SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

150.01 Definitions. In this chapter:

(1) "Acquisition" includes a change in ownership.

(2) "Affected party" means the applicant, local planning agencies, governmental agencies, other persons providing similar services in the applicant's service area, the public to be served by the proposed project, 3rd-party payers and any other person who the department determines to be affected by an application for approval of a project.

(3) "Approval" means a written statement from the department authorizing a person to commence implementing a project under review.

(4m) "Approved bed capacity" means the bed count collected and verified by the department and by a hospital.

(5) "Bed capacity" means the number of beds stated on the license of a nursing home issued under s. 50.03.

(6) "Capital expenditure" means an expenditure by or on behalf of a nursing home or hospital that, under generally accepted accounting principles, is not properly chargeable as an expense of operations or maintenance.

(8) "Community-based residential facility" has the meaning specified in s. 50.01 (1g).

(9) "Cost overrun" means an obligation exceeding the maximum capital expenditure authorized by an approval.

(10) "Department" means the department of health services.

(12) "Hospital" has the meaning specified in s. 50.33 (2), excluding the facilities exempted by s. 50.39 (3).

(13) "Medical assistance" has the meaning specified in s. 49.43 (8).

(15) "Nursing home" has the meaning specified in s. 50.01 (3).

(16) "Obligation" means any enforceable contract that is entered into for the construction, leasing, acquisition or permanent financing of a capital asset.

(17) "Person" includes the state.

(19) "Statewide bed limit" means the maximum number of nursing home beds or beds in facilities primarily serving the developmentally disabled allowed to be licensed under ch. 50.

(20) "Substantial and continuing progress" means spending more than 20 percent of a project's approved cost, including fees for legal services, planning studies, financing, consultants, inspections, permits, architectural services and interest during construction.

(22) "Working day" has the meaning specified in s. 227.01 (14).

History: 1983 a. 27, 206; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 253; 1987 a. 27; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 359; 1991 a. 250; 1993 a. 16; 1995 a. 27 ss. 4382 to 4385, 9126 (19); 2005 a. 253; 2007 a. 20 s. 9121 (6) (a).

A new health game. Thomas and Wagner. WBB Feb. 1984.

150.03 Rule making; forms. The department shall adopt rules and set standards to administer subchs. I and II. The department shall create the forms to be used and timetables to be followed under subchs. I and II in applying for an approval and in applying for the renewal or modification of an approval. The department shall issue a statement of the applicable rules and procedures to be followed in reviewing an application under subchs. I and II with each application form.

History: 1983 a. 27; 1991 a. 250.

Cross-reference: See also ch. DHS 122, Wis. adm. code.

150.05 Actions in circuit court. Notwithstanding the existence or pursuit of any other remedy the department may, after consulting with the attorney general, maintain an action in the name of the state in circuit court to restrain or enjoin any violation of this chapter or rules adopted under this chapter.

History: 1983 a. 27.

150.09 Staff. The department may employ staff as needed to administer this chapter.

History: 1983 a. 27.

150.11 Enforcement. (1) The department may refuse to issue or renew, under s. 50.03, any license for a nursing home, and may withhold, suspend or revoke, under s. 50.35, any approval for a hospital, that fails to comply with this chapter.

(2) No person may recover through charges or rates any depreciation, interest or principal payments or any operating expenses associated with a project subject to subch. II that does not have the department's approval.

(3) (a) If a project whose cost falls below the minimum threshold specified in s. 150.21 (3) or (4) incurs costs exceeding the threshold, the person who operates the project shall submit an application for the department's approval under s. 150.21.

(b) If a project that has received the department's approval incurs a cost overrun, the person who operates the project shall submit another application for the department's approval under s. 150.21.

(c) Any person required to submit an application under this subsection for the department's approval under s. 150.21 shall comply with the time limits for submission of applications under s. 150.33 (3) and (3m). The department shall afford an applicant under this subsection a reasonable time to obtain its approval but if it rejects the application it may refuse to issue or renew a license or approval, as specified in sub. (1), and costs associated with the project may not be recovered through charges or rates, as specified in sub. (2). If the department approves the project it shall impose a forfeiture on the person who operates the project of not less than 10 percent and not more than 50 percent of the costs exceeding the threshold under par. (a) or of the cost overrun under par. (b). Project approval takes effect only after payment of the forfeiture has been made.

(4) The department's approval of any project is revoked if the capital expenditures specified in the approval have not been obligated, if financing in an amount sufficient to complete the project has not been obtained or if substantial and continuing progress has not been undertaken within the period specified in the approval. In addition, the department's approval of any project is revoked if the person who operates a project misses any other deadlines specified in the approval and fails to make a good faith effort to meet these deadlines.

(5) The department may reject the application for approval of a project operated by any person who has repeatedly been subject to the penalties specified in this section or may impose restrictions as part of its approval to ensure compliance with subchs. I and II.

History: 1983 a. 27; 1985 a. 72; 1987 a. 27; 1991 a. 250; 1995 a. 27.

150.13 Fees. Any person applying for approval under subch. I or II shall pay an application fee equal to 0.37 percent of the estimated project cost, but not less than $1,850 and not more than $37,000. No application is complete without payment of the correct fee.

History: 1983 a. 27; 1991 a. 250.

SUBCHAPTER II

RESOURCE ALLOCATION PROGRAM; LONG-TERM CARE

150.21 Applicability. Except as provided in s. 150.46, this subchapter applies to any person who intends to engage in any of the following activities:

(1) The construction of a new nursing home.

(2) An increase in the bed capacity of a nursing home.

(3) A capital expenditure, other than a renovation or replacement, that exceeds $1,000,000 by or on behalf of a nursing home.

(4) An expenditure, other than a renovation or replacement, that exceeds $600,000 for clinical equipment by or on behalf of a nursing home.

(5) The partial or total conversion of a nursing home to a facility primarily serving the developmentally disabled or of a facility primarily serving the developmentally disabled to a nursing home.

History: 1983 a. 27; 1987 a. 27; 1991 a. 120; 1993 a. 290; 1997 a. 27.

150.27 Per diem capital rates. An application for approval of an activity specified under s. 150.21 (1), (3), (4) or (5) shall state the applicant's per diem capital rates, which are the maximum allowable reimbursement that may be granted by the department for the first 12 months following completion of the approved project. If the medical assistance facility payment formula under s. 49.45 (6m) generates per diem capital rates that are less than those stated in the application under review, the department shall use the lower rates.

History: 1983 a. 27; 1987 a. 27; 1991 a. 120; 1993 a. 290.

150.29 Approval requirement. (1) No person may enter into an obligation for a project described in s. 150.21 or engage in activities described in that section without the department's prior approval.

(2) In its approval of any project the department shall specify the total number of approved additional beds and the maximum capital expenditure and per diem rates permitted.

(3) In determining whether expenditures require prior approval under this section, the department shall aggregate separate expenditures and consider them together if any of the following applies:

(a) The aggregated expenditures were agreed upon at the same time, authorized by one act or devised or designed as parts of one plan.

(b) The needs for or purposes of the aggregated expenditures reasonably could have been foreseen when the first expenditure was made, and the aggregated expenditures most economically and efficiently would be made at the same time.

History: 1983 a. 27; 1993 a. 290.

150.31 Statewide bed limit. (1) In order to enable the state to budget accurately for medical assistance and to allocate fiscal resources most appropriately, the maximum number of licensed nursing home beds statewide is 51,795 and the maximum number of beds statewide in facilities primarily serving the developmentally disabled is 3,704. The department may adjust these limits on licensed beds as provided in subs. (2) to (6). The department shall also biennially recommend changes to this limit based on the following criteria:

(a) The number of licensed nursing home beds.

(c) The total number of additional nursing home beds approved under s. 150.29.

(d) The availability of alternatives less costly than increasing the number of nursing home beds to provide long-term care.

(e) The amount of medical assistance funds available or to be made available in the following biennial executive budget for additional nursing home beds.

(f) The cost of providing additional nursing home beds.

(2) The department may increase the statewide bed limit specified in sub. (1) to account for the conversion of community-based residential facilities to nursing homes in order to maintain medical assistance certification, as provided in s. 49.45 (16).

(2m) (a) The department may, on July 1, 1990, increase the statewide bed limit in sub. (1) by not more than 25 beds to permit the permanent and complete conversion of a hospital to a nursing home if the hospital seeking conversion:

1. Had, on January 1, 1990, an approved bed capacity of no more than 50 beds; and

2. Ceases to exist as an acute care hospital by July 1, 1990.

(b) The department shall decrease the number of beds authorized for increase under par. (a) by the amount of any addition in the actual number of available beds within the limit specified in sub. (1), up to 25 beds, that exists on July 1, 1990.

(2r) (a) The department may, on July 1, 1998, increase the statewide bed limit in sub. (1) by not more than 6 beds to permit the permanent and complete closure of a hospital and its partial conversion to a nursing home if the hospital seeking partial conversion:

1. Had, on January 1, 1998, an approved bed capacity of not more than 50 beds.

2. Is located north of USH 8.

3. Ceases to exist as an acute care hospital by July 1, 1998.

(b) The department shall decrease the number of beds authorized for increase under par. (a) by the amount of any addition in the actual number of available beds within the limit specified in sub. (1), up to 6 beds, that exists on July 1, 1998.

(c) The application to the department governing the permanent and complete closure of a hospital and partial conversion to a nursing home under par. (a) is exempt from the procedural requirements of this chapter.

(3) The department may decrease the statewide bed limit specified in sub. (1) to account for nursing home beds that are not set up or not staffed due to life safety code or physical plant requirements under s. 50.04, but that have not been permanently removed from the nursing home's bed capacity. In addition, the department may decrease the statewide bed limit specified in sub. (1) to account for beds closed under a medical assistance waiver, as specified in 42 USC 1396n (c) or under other medical assistance waivers specified in 42 USC 1396 to 1396n.

(4) The department may decrease the statewide bed limit in facilities primarily serving the developmentally disabled in order to account for any decreased use of beds at the state centers for the developmentally disabled due to the community integration program under s. 46.275.

(5) The department may decrease the statewide bed limits specified in sub. (1) to account for any reduction of available beds not included under sub. (3) or (4), in accordance with criteria promulgated by rule.

(5m) The department shall decrease the statewide bed limit specified in sub. (1) to account for any reduction in the approved bed capacity of a skilled nursing facility operated by the department of veterans affairs under s. 45.50, as specified in s. 45.50 (10).

(5r) The department shall decrease the statewide bed limit specified in sub. (1) by the number of any beds that a nursing home shall agree to reduce in order to convert a separate area of its total area to a residential care apartment complex under s. 50.034 (4).

(5t) The department shall decrease the statewide bed limits specified in sub. (1) to account for any reduction in the licensed bed capacity of a nursing home that has relinquished use of a bed, as specified in s. 49.45 (6m) (ap) 4.

(6) The department may adjust the statewide bed limits specified in sub. (1) to account for the partial or total conversion of nursing homes to facilities primarily serving the developmentally disabled or of facilities primarily serving the developmentally disabled to nursing homes. The department may promulgate rules limiting the number of nursing home beds converted under this subsection, allocating the beds so converted, and establishing standards for the limitation and allocation.

(7) The department may not approve or license any additional nursing home beds if the addition of those beds would exceed the limits established under subs. (1) to (6).

(8) The department may allocate or distribute nursing home beds in a manner, developed by rule, that is consistent with the criteria specified in sub. (1) (a) to (f) and s. 150.39.

History: 1983 a. 27; 1985 a. 29; 1987 a. 27; 1989 a. 336; 1995 a. 20, 27; 1997 a. 13, 27, 36, 237, 252; 1999 a. 63; 2005 a. 22; 2011 a. 32.

150.32 Distinct-part facilities primarily serving the developmentally disabled. (1) Upon application to the department, the department may approve the operation for a period of time not to exceed 4 years of a distinct part of a nursing home as a facility primarily serving the developmentally disabled. Renewals of approvals initially granted under this subsection may be granted for periods of time not to exceed 4 years and only if all of the following conditions are met by the renewal applicant:

(a) Continued operation of the facility primarily serving the developmentally disabled meets the review criteria and standards under ss. 150.31 (6) and 150.39.

(b) There is continued need, as determined by the department, for the facility primarily serving the developmentally disabled in the health planning area in which the facility is located.

(c) Community-based services, including services developed under s. 46.278, are inappropriate for the individuals served in the facility primarily serving the developmentally disabled.

(2) The department may require that a nursing home seeking approval or a facility primarily serving the developmentally disabled seeking renewal under sub. (1) agree to reduce the size of the facility primarily serving the developmentally disabled, under a plan submitted by the facility and approved by the department, during the approval or renewal period, in order to reflect reduced service need or increased availability of community-based services providing long-term care.

(3) Notwithstanding s. 150.31 (6), the department may waive any minimum size limits established under s. 150.31 (6) for a facility with an approved plan under sub. (2).

(4) Notwithstanding s. 150.29, if initial approval of a facility primarily serving the developmentally disabled is not renewed under sub. (1) or if approval or renewal is conditioned upon the requirement of sub. (2), reconversion to nursing home beds of beds which may not be operated as part of a facility primarily serving the developmentally disabled does not require approval under s. 150.29.

History: 1987 a. 27.

150.33 Applications for available beds. (1) At least once each year the department shall publish a class 2 notice under ch. 985 concerning the number of nursing home beds and beds in facilities primarily serving the developmentally disabled, if any, that are available under s. 150.31 or 150.40 in each of its health planning areas. The department shall promulgate rules defining

the boundaries of these areas. The notice shall state the procedures by which any person may apply for approval for those beds.

(2) An application for approval of beds under sub. (1) shall state the applicant's per diem operating and capital rates, which are the maximum allowable reimbursement that may be granted by the department for the first 12 months following licensure of the new beds. If the medical assistance facility payment formula under s. 49.45 (6m) generates per diem operating and capital rates that are less than those stated in the application under review, the department shall use the lower rates.

(3) The department shall provide forms for submitting applications but may only accept applications submitted within 60 days after it publishes a notice under sub. (1).

(3m) The department shall review each application it receives for completeness. If the department finds that the application is incomplete, it shall notify the applicant of the information required within 10 working days after receiving the application. Each applicant shall provide any required additional information within 30 days following the closing date for accepting applications specified in sub. (3). The department may not accept for review any incomplete application if it fails to receive the additional information within this 30-day period until it issues another public notice soliciting applications under sub. (1). The department shall declare the application complete on the date on which the department receives all the required information.

(4) The department shall issue a class 2 notice under ch. 985 within 20 days after the date on which it declares all applications complete under sub. (3m), listing all applicants and describing their applications.

History: 1983 a. 27; 1987 a. 27 ss. 1868 to 1871, 1874; 1987 a. 399; 1993 a. 290.

150.34 Other applications. (1) Any person intending to engage in activities subject to this subchapter not specified under s. 150.33 shall notify the department in writing of this intent at least 30 days prior to submitting an application for review. An application expires unless the department declares the application complete under sub. (2) within 365 days after the date the department receives notice of the applicant's intent to engage in the activity. The department shall provide forms for submitting applications under this section.

(2) The department shall review each application it receives for completeness. If the department finds that the application is incomplete, it shall notify the applicant of the information required within 10 working days after receiving the application. The department shall declare the application complete on the date on which the department receives all the required information.

(3) The department shall issue a class 2 notice under ch. 985 on or before the 20th day of the month following the month in which it declares an application complete under sub. (2), listing the applicant and describing the applicant's proposed activity.

History: 1987 a. 27, 399; 1989 a. 56.

150.345 Nursing home bed transfers. (1) Notwithstanding ss. 150.33 and 150.34, a nursing home may transfer a licensed bed to another nursing home, if all of the following apply:

(a) The receiving nursing home is within the same area for allocation of nursing home beds, as determined by the department, as is the transferring nursing home, or is in a county adjoining that area.

(b) The transferring nursing home and the receiving nursing home are owned by corporations that are owned by the same person.

(c) The transferring and receiving nursing homes notify the department of the proposed transfer within 30 days before the transfer occurs.

(d) The department reviews and approves the transfer.

(2) Upon receiving the notification specified in sub. (1) (c), the department shall adjust the allocation of licensed beds under s. 150.31 for each nursing home in accordance with the transfer that was made.

History: 2001 a. 16.

150.35 Review procedures. (2) The department shall hold a public meeting upon the request of an affected party to review applications under s. 150.33 or 150.34, at which all affected parties may present testimony. The department shall keep minutes or other record of testimony presented at the public meeting and shall, based on the testimony, consider the record in determining whether the applicant has met the review criteria under s. 150.39.

(3) Except as provided under sub. (3m), the department shall issue an initial finding to approve or reject the application within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3), unless all applicants consent to an extension of this period. The department may extend by 60 days the review cycle of all applications being concurrently reviewed if it finds that completing the reviews within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3) is not practicable due to the volume of applications received. The department shall base its initial finding on a comparative analysis of applications, relying on the criteria specified in s. 150.39. The applicant has the burden of proving, by a preponderance of the evidence, that each criterion specified in s. 150.39 has been met or does not apply to the project. The department may approve fewer additional nursing home beds than allowed by the statewide bed limit if the cost of adding those beds exceeds the medical assistance allocation for new beds projected in s. 150.31 (1) (e). Unless an adversely affected applicant makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final action.

(3m) (a) The department may receive any of the following applications:

1. An application which was developed under a plan of correction, as defined in s. 50.01 (4r), previously approved by the department and which does not add beds to the current licensed bed capacity.

2. Any application involving a cost overrun submitted under s. 150.11 (3).

3. All applications for activities that are specified in s. 150.21 (3).

(b) Subsection (2) does not apply to the applications under par. (a). Within 60 days after it receives a completed application, the department shall, according to procedures it promulgates by rule, review the application and issue its initial finding. No public meeting need be held on any project submitted under this subsection.

(c) Unless an adversely affected applicant makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final decision.

(4) (a) Any applicant whose project is rejected may request a public hearing to review the department's initial finding under sub. (3) or (3m), if the request is submitted in writing within 10 days after the department's decision. The department shall commence the hearing within 30 days after receiving a timely request, unless all parties consent to an extension of this period.

(b) Sections 227.42 to 227.50 do not apply to hearings under this subsection. The department shall promulgate rules to establish:

1. Procedures for scheduling hearings under this subsection.

2. Procedures for conducting hearings under this subsection,

including methods of presenting arguments, cross-examination of witnesses and submission of exhibits.

3. Procedures following the completion of a hearing under this subsection, including the establishment of time limits for issuance of a decision.

4. Standards relating to ex parte communication in hearings under this subsection.

5. Procedures for reconsideration and rehearing.

(c) The department shall issue all decisions in writing.

(d) Each applicant at any hearing under this subsection has the burden of proving, by clear and convincing evidence, that the department's initial finding was contrary to the weight of the evidence on the record when considered as a whole, arbitrary and capricious or contrary to law.

History: 1983 a. 27; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 173; 1993 a. 290; 1997 a. 27.

150.39 Review criteria and standards. The department shall use the following criteria in reviewing each application under this subchapter, plus any additional criteria it develops by rule. The department shall consider cost containment as its first priority in applying these criteria, and shall consider the comments of affected parties. The department may not approve any project under this subchapter unless the applicant demonstrates:

(1) The medical assistance funds appropriated are sufficient to reimburse the applicant for providing the nursing home care.

(2) The cost of providing an equal number of nursing home beds or of an equal expansion would be consistent with the cost at similar nursing homes, and the applicant's per diem rates would be consistent with those of similar nursing homes.

(3) The project does not conflict with the statewide bed limit under s. 150.31.

(4) A need for additional beds in the health planning area where the project would be located.

(5) The project is consistent with local plans for developing community-based services to provide long-term care.

(6) Health care personnel, capital and operating funds and other resources needed to provide the proposed services are available.

(7) The project can be undertaken within the period of validity of the approval and completed within a reasonable period thereafter.

(8) Appropriate methods alternative to providing nursing home care in the health planning area are unavailable.

(10) The quality of care to be provided is satisfactory, as determined by:

(a) The department's investigations.

(b) Materials submitted by the applicant, including independent evaluations of performance in nursing homes owned or operated by the applicant and patient satisfaction surveys.

(c) Recommendations from affected parties concerning the quality of care provided in nursing homes owned or operated by the applicant.

(11) For a project that would result in the relocation of nursing home beds, there are other adequate and appropriate resources available in the counties served by the nursing home to serve the nursing home residents who would be displaced by the relocation.

History: 1983 a. 27; 1987 a. 399; 1993 a. 27, 290; 1997 a. 27.

150.40 Redistribution of closed beds. (1) The department shall redistribute within a county the nursing home beds made available as a result of a nursing home closure within that county if all of the following apply at the time of the closure:

(a) The number of other nursing home beds for each 1,000 persons 65 years of age or over in the county is less than 80 percent of the statewide average of nursing home beds for each 1,000 persons 65 years of age or over.

(b) The total occupancy level for the other nursing homes in the county is equal to or more than the statewide average nursing home occupancy rate.

(2) Subsection (1) does not apply to the following:

(a) Nursing home beds closed under a plan approved by the department under s. 46.277 (3) (b) or 46.278 (4) (b) 1., as a result of the relocation of former residents to community-based settings.

(b) Facilities primarily serving the developmentally disabled.

History: 1985 a. 29; 1987 a. 27.

150.401 Redistribution of nursing home beds to replace transferred beds. (1) Notwithstanding ss. 150.33, 150.35, and 150.39, from the nursing home beds that are available under s. 150.31, the department shall redistribute a number of beds that corresponds to the number of approved beds of a nursing home whose owner has transferred to another location, resulting in the loss of a nursing home within 15 miles of a city with a population of 4,474 in 1990 in a county with a population of 30,226 in 1990.

(2) All of the following apply to the redistributed nursing home beds under sub. (1):

(a) The beds may be redistributed only to a location in a city that is specified in sub. (1).

(b) A person may not receive approval for the beds unless the person submits to the department, on a form provided by the department, an application that meets the requirements under s. 150.33 (2).

History: 2001 a. 109.

150.41 Approvals not transferable. No person may transfer through sale, lease or donation any approval granted under this subchapter. The sale, lease or donation of a nursing home before the completion or licensure of a project at that nursing home voids the approval. This section does not apply to transfers of stock within a corporation that do not alter the controlling interest in the corporation or to transfers of interests within a limited liability company that do not alter the controlling interest in the limited liability company.

History: 1983 a. 27; 1993 a. 112.

150.43 Judicial review. Any applicant adversely affected by a decision of the department under s. 150.35 (4) may petition for judicial review of the decision under s. 227.52. The scope of judicial review shall be as provided in s. 227.57 and the record before the reviewing court shall consist of:

(1) The application and all supporting material received prior to the department's decision under s. 150.35 (3) or (3m).

(3) The record of the public meeting, if any, under s. 150.35 (2).

(4) The department's analysis of the project and its compliance with the criteria specified in s. 150.39.

(5) Concluding briefs and arguments at a hearing and the findings of fact of the hearing examiner at the hearing under s. 150.35 (4).

(6) The department's findings and conclusions issued under s. 150.35 (3) or (3m).

History: 1983 a. 27; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 173.

This section precludes all affected parties, except unsuccessful applicants for licenses, from seeking s. 227.52 judicial review of a DHSS decision to grant or deny a nursing home bed license. Cox v. DHSS, 184 Wis. 2d 309, 517 N.W.2d 526 (Ct. App. 1994).

150.45 Validity of an approval. (1) An approval is valid for one year from the date of issuance. The department may grant a single extension of up to 6 months.

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

(3) Any person whose project has been approved under this subchapter shall document in writing, on forms developed by the department, the progress of the project. The person shall submit these forms semiannually until the project is completed. On these forms, the person shall:

(a) Identify the project and the approval holder.

(b) Specify the date of approval.

(c) Describe the stages of the project that are complete.

(d) Report on the project's status, including any deficiencies.

(e) Identify any cost overrun and propose changes in the project necessary to reduce costs, so as not to exceed the maximum approved capital expenditure.

(f) Estimate the date that uncompleted stages of the project will be completed.

History: 1983 a. 27; 1993 a. 290.

150.46 Exceptions. (1) This subchapter does not apply to a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50.

(2) This subchapter does not apply to up to 4 facilities established and operated under s. 46.047.

History: 1991 a. 120; 1993 a. 16; 1999 a. 9, 63; 2005 a. 22.

SUBCHAPTER IV

HEALTH CARE COOPERATIVE AGREEMENTS

150.84 Definitions. In this subchapter:

(1) "Cooperative agreement" means an agreement between 2 health care providers or among more than 2 health care providers for the sharing, allocation or referral of patients; or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities or procedures or other services customarily offered by health care providers.

(2) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health center or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.50, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(3) "Health care provider" means any person licensed, registered, permitted or certified by the department or by the department of safety and professional services to provide health care services in this state.

(4) "Health maintenance organization" has the meaning given in s. 609.01 (2).

(5) "Preferred provider plan" has the meaning given in s. 609.01 (4).

History: 1991 a. 250; 1993 a. 27; 1995 a. 27; 1997 a. 35; 1999 a. 9; 2005 a. 22; 2011 a. 32.

150.85 Certificate of public advantage. (1) AUTHORITY. A health care provider may negotiate and voluntarily enter into a cooperative agreement with another health care provider in this state. The requirements of ch. 133 apply to the negotiations and cooperative agreement unless the parties to the agreement hold a certificate of public advantage for the agreement that is issued by the department and is in effect under this section.

(2) APPLICATION. Parties to a cooperative agreement may file an application with the department for a certificate of public advantage governing the cooperative agreement. The application shall include a signed, written copy of the cooperative agreement, and shall describe the nature and scope of the cooperation contemplated under the agreement and any consideration that passes to a party under the agreement.

(3) PROCEDURE FOR DEPARTMENT REVIEW. (a) The department shall review and approve or deny the application in accordance with the standards set forth in sub. (4) within 30 days after receiving the application. Unless the department issues a denial of the certificate of public advantage, the application is approved.

(b) If the department denies the application for a certificate of public advantage, the department shall issue the denial to the applicants in writing, including a statement of the basis for the denial and notice of the opportunity for a hearing under s. 227.44. If the applicant desires to contest the denial of an application, it shall, within 10 days after receipt of the notice of denial, send a written request for hearing under s. 227.44 to the division of hearings and appeals in the department of administration and so notify the department of health services.

(4) STANDARDS FOR CERTIFICATION. (a) The department shall issue a certificate of public advantage for a cooperative agreement if it determines all of the following:

1. That the benefits likely to result from the agreement substantially outweigh any disadvantages attributable to a reduction in competition likely to result.

2. That any reduction in competition likely to result from the agreement is reasonably necessary to obtain the benefits likely to result.

(b) In order to determine that the criterion under par. (a) 1. is met, the department shall find that at least one of the following is likely to result from the cooperative agreement:

1. The quality of health care provided to residents of the state will be enhanced.

2. A hospital, if any, and health care facilities that customarily serve the communities in the area likely affected by the cooperative agreement will be preserved.

3. Services provided by the parties to the cooperative agreement will gain cost efficiency.

4. The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve.

5. Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided.

(c) In order to determine that the criterion under par. (a) 2. is met, the department shall consider all of the following:

1. The likely adverse impact, if any, on the ability of health maintenance organizations, preferred provider plans, persons performing utilization review or other health care payers to negotiate optimal payment and service arrangements with hospitals and other health care providers.

2. Whether any reduction in competition among physicians, allied health professionals or other health care providers is likely to result directly or indirectly from the cooperative agreement.

3. Whether any arrangements that are less restrictive as to competition could likely achieve substantially the same benefits or a more favorable balance of benefits over disadvantages than that likely to be achieved from reducing competition.

(5) CERTIFICATE REVOCATION. (a) If the department determines that the benefits resulting from or likely to result from a cooperative agreement under a certificate of public advantage no longer outweigh any disadvantages attributable to any actual or potential reduction in competition resulting from the agreement,

the department may revoke the certificate of public advantage governing the agreement and, if revoked, shall so notify the holders of the certificate. A holder of a certificate of public advantage whose certificate is revoked by the department may contest the revocation by sending a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1), within 10 days after receipt of the notice of revocation.

(b) If a party to a cooperative agreement that is issued a certificate of public advantage terminates its participation in the agreement, the party shall file a notice of termination with the department within 30 days after the termination takes effect. If all parties to the cooperative agreement terminate their participation in the agreement, the department shall revoke the certificate of public advantage for the agreement.

(6) RECORD KEEPING. The department shall maintain a file of all cooperative agreements for which certificates of public advantage are issued and that remain in effect.

History: 1991 a. 250; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).
Antitrust Immunity for Health Care Providers. Bosack. 80 MLR 245 (1997).

150.86 Judicial review. A denial by the department under s. 150.85 (3) (b) of an application for a certificate of public advantage and a revocation by the department under s. 150.85 (5) (a) of a certificate of public advantage is subject to judicial review under ch. 227.

History: 1991 a. 250.

SUBCHAPTER VI

MORATORIUM ON CONSTRUCTION OF HOSPITAL BEDS

150.93 Moratorium on construction of hospital beds. **(1)** The maximum number of beds of approved hospitals in this state that may be approved by the department for occupancy is 22,516.

(2) Except as provided in subs. (3) and (3m), before July 1, 1996, no person may obligate for a capital expenditure or implement services, by or on behalf of a hospital, to increase the approved bed capacity of a hospital unless the person has, prior to May 12, 1992, entered into a legally enforceable contract, promise or agreement with another to so obligate or implement.

(3) A person may obligate for a capital expenditure, by or on behalf of a hospital, to renovate or replace on the same site existing approved beds of the hospital or to make new construction, if the renovation, replacement or new construction does not increase the approved bed capacity of the hospital.

(3m) A person may obligate for a capital expenditure or implement services that increase the approved bed capacity of a hospital if the capital expenditure or services are necessitated by a transfer of beds from a public hospital that is operated by a county with a population of 750,000 or more to a private hospital and if the resulting combined total number of approved beds in the 2 hospitals does not increase.

(4) No person may transfer approved beds of a hospital to a facility that is associated with the hospital.

(5) This section does not apply to a hospital operated by the state department of veterans affairs under s. 45.50 (10).

History: 1991 a. 250; 1995 a. 20, 27; 2005 a. 22; 2017 a. 207 s. 5.

SUBCHAPTER VII

PSYCHIATRIC OR CHEMICAL DEPENDENCY BED LIMITATIONS

150.94 Definitions. In this subchapter:

(1) Notwithstanding s. 150.01 (12), "hospital" has the meaning given in s. 50.33 (2).

(2) "Inpatient facility" has the meaning given in s. 51.01 (10).

History: 1991 a. 250; 1995 a. 27.

150.95 Moratorium. **(1)** Before July 1, 1996, no person may obligate for a capital expenditure by or on behalf of a hospital, to add to the number of the licensed psychiatric or chemical dependency beds of the hospital that the department determines exist on May 12, 1992, or to establish a new hospital with psychiatric or chemical dependency beds. Before July 1, 1996, no person may convert existing hospital beds approved for occupancy to licensed psychiatric or chemical dependency beds of the hospital.

(2) This section does not apply to a hospital operated by the state department of veterans affairs under s. 45.50 (10).

History: 1991 a. 250; 1995 a. 20, 27; 2005 a. 22.

150.951 Exceptions. Section 150.95 does not apply to any of the following:

(1) A transfer of psychiatric or chemical dependency beds from a public hospital that is operated by a county with a population of 750,000 or more and that is not an inpatient facility to a private hospital or to a public hospital that is an inpatient facility, if the resulting combined total of licensed psychiatric or chemical dependency beds in the affected hospitals does not increase.

(2) A transfer of psychiatric or chemical dependency beds from a hospital to a private hospital in the same county that has an existing psychiatric or chemical dependency unit or to a public hospital that is operated by the same county, if the resulting combined total of licensed psychiatric or chemical dependency beds in the affected hospitals decreases from the number that is specified in s. 150.95.

History: 1995 a. 27, 417; 2017 a. 207 s. 5.

SUBCHAPTER VIII

FACILITIES FOR THE INTELLECTUALLY DISABLED AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION

150.96 Definitions. In this subchapter, unless the context requires otherwise:

(1) "Community mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community in or near which the facility is situated.

(2) "Facility for individuals with an intellectual disability" means a facility specially designed for the diagnosis, treatment, education, training or custodial care of individuals with an intellectual disability; including facilities for training specialists and sheltered workshops for individuals with an intellectual disability, but only if such workshops are part of facilities which provide or will provide comprehensive services for individuals with an intellectual disability.

(3) "The federal act" means the mental retardation facilities and community mental health centers construction act of 1963 (P.L. 88-164).

(4) "Nonprofit facility for individuals with an intellectual disability", and "nonprofit community mental health center" mean, respectively, a facility for individuals with an intellectual disability, and a community mental health center which is owned and operated by one or more nonprofit corporations or associations

no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(5) "The secretary" means the secretary of the U.S. department of health and human services or a delegate to administer the federal act.

History: 1979 c. 177; 1981 c. 314; 1983 a. 189; 1993 a. 27 s. 237; Stats. 1993 s. 150.96; 1999 a. 83; 2011 a. 126.

150.963 Construction of facilities for the intellectually disabled and community mental health centers. (2) The department shall be the sole agency of the state for all of the following purposes:

(a) Making inventories of existing facilities, surveying the need for construction for facilities for individuals with an intellectual disability and community mental health centers, and developing programs of construction.

(b) Developing and administering a state plan for the construction of public and other nonprofit facilities for individuals with an intellectual disability, and a state plan for the construction of public and other nonprofit community mental health centers.

(3) The department, in carrying out the purposes of this subchapter, may do any of the following:

(a) Require reports, make inspections and investigations and prescribe rules that it considers necessary.

(b) Provide methods of administration, appoint personnel, and take other action that is necessary to comply with the requirements of the federal act and regulations under the federal act.

(c) Procure the temporary or intermittent services of experts or consultants or organizations of experts and consultants, by contract, when those services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties.

(d) To the extent that it considers desirable to effectuate the purposes of this subchapter, enter into agreements for the utilization of facilities and services of other departments, agencies and institutions, public or private.

(e) Accept on behalf of the state and deposit with the secretary of administration any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of this subchapter, and expend those funds for the purposes of this subchapter.

(f) Do all other things on behalf of the state necessary to obtain full benefits under the federal act.

History: 1979 c. 89; 1993 a. 27 s. 238; Stats. 1993 s. 150.963; 1999 a. 83; 2003 a. 33; 2011 a. 126.

150.965 Construction programs. The department is directed to develop construction programs for facilities for individuals with an intellectual disability and community mental health centers for the mentally ill, which shall be based respectively on statewide inventories of existing facilities for individuals with an intellectual disability and the mentally ill and surveys of need, and which shall provide in accordance with regulations prescribed under the federal act, for facilities which will provide adequate services for individuals with an intellectual disability and adequate community mental health services for the people residing in this state and for furnishing needed services to persons unable to pay therefor.

History: 1993 a. 27 s. 239; Stats. 1993 s. 150.965; 1993 a. 213; 2011 a. 126.

150.967 State plans. The department shall prepare and submit to the secretary, state plans which shall include the programs for construction of facilities developed under this subchapter and which shall provide for the establishment, administration and operation of the construction activities in accordance with the requirements of the federal act and regulations under the federal act. The department shall from time to time, but not less often than annually, review the state plans and submit to the secretary any modifications of the state plans which it considers necessary and may submit to the secretary such modifications of the state plan not inconsistent with the requirements of the federal act, as it deems advisable.

History: 1979 c. 89; 1993 a. 27 s. 240; Stats. 1993 s. 150.967.

150.97 Standards for maintenance and operation. The department shall by regulation prescribe, and shall be authorized to enforce, standards for the maintenance and operation of facilities for individuals with an intellectual disability, and community mental health centers which receive federal aid for construction under the state plans.

History: 1993 a. 27 s. 241; Stats. 1993 s. 150.97; 2011 a. 126.

150.973 Priority of projects. The state plans shall set forth the relative need and feasibility for the several projects included in the construction programs determined in accordance with the regulations prescribed pursuant to the federal act, and shall provide for the construction insofar as financial resources are available therefor in the order of such relative need and feasibility.

History: 1993 a. 27 s. 242; Stats. 1993 s. 150.973.

150.975 Applications. Applications for facility for individuals with an intellectual disability or community mental health center construction projects for which federal funds are requested shall be submitted to the department by the state, a political subdivision thereof or by a public or other nonprofit agency. Each application for a construction project shall conform to federal and state requirements.

History: 1993 a. 27 s. 243; Stats. 1993 s. 150.975; 2011 a. 126.

150.977 Hearing; forwarding of applications. The department shall afford to every applicant for a construction project an opportunity for a fair hearing. If the department, after affording reasonable opportunity for development and submission of applications, finds that a project application complies with the requirements of this subchapter and is otherwise in conformity with the state plan, it shall approve the application and shall recommend and forward it to the secretary.

History: 1979 c. 89; 1993 a. 27 s. 244; Stats. 1993 s. 150.977.

150.98 Inspection of projects. From time to time the department or its duly authorized agents shall inspect each construction project approved by the secretary, and if the inspection so warrants, the department shall certify to the secretary that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

History: 1993 a. 27 s. 245; Stats. 1993 s. 150.98.

150.983 Facilities for individuals with an intellectual disability and community mental health centers construction funds. The department may receive federal funds in behalf of, and transmit them to, applicants. In the general fund there is hereby established, separate and apart from all public moneys of this state, an intellectual disability facilities construction fund and a community mental health centers construction fund. Money received from the federal government for a construction project under this subchapter approved by the secretary shall be deposited to the credit of the appropriate fund and shall be used solely for payments to applicants for work performed, or purchases made, in carrying out the approved project.

History: 1979 c. 89; 1993 a. 27 s. 246; Stats. 1993 s. 150.983; 1993 a. 490; 2011 a. 126.