

DEPARTMENT OF REVENUE

CLEARINGHOUSE RULE NUMBER 10-005

SECTION 227.19(2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

The rule is necessary to establish the requirements for administration of the ambulatory surgical center assessment; describe how the amount of the assessment for each ambulatory surgical center is determined; detail how the department will collect assessments; provide guidance regarding data required to be submitted to the department to determine assessment amounts; and specify the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

Public Hearing

A public hearing was held on February 11, 2010. Testimony was offered by Eric Ostermann, Executive Director of the Wisconsin Surgery Center Association (WISCA); LoAnn Vande Leest, past President of the WISCA; and Sandy Schlee, current President of the WISCA. The testimony provided is reflected in the attached written comments provided by the representatives of the WISCA, and also submitted by Sara McCallum, Legislative Chair of the WISCA.

Summary of Public Comments and Agency Response

The attached written comments were submitted by the WISCA on February 17, 2010. Substantively the same written comments were also provided by several individual ambulatory surgical centers operating in Wisconsin. Comments were received from: NovaMed Surgery Center of Madison; Gastrointestinal Associates Endoscopy Center; Orthopedic & Sports Institute of the Fox Valley; and Niagara Health Center. In addition, comments relating to the effect of the ASC assessment on patients and providers were received from the Menomonee Falls Ambulatory Surgical Center and the Center for Aesthetics and Plastic Surgery. Among those comments was a request for further clarification of the definition of "gross patient revenue."

In consultation with the Department of Health Services, the Department concluded that no changes to the proposed rule would be made as a result of the comments received. It is the Department's belief that the comments and suggested changes are either not germane to or could adversely affect the administration of the ambulatory surgical center assessment. The Department prepared a formal response to the comments submitted by the WISCA, which is attached to this report.

Legislative Council Staff Recommendations

All Legislative Council staff recommendations have been incorporated in the proposed rule order, with the following exceptions:

- A recommendation was made to place the registration requirements in the text of Tax 1.17 (3) (a). Registration requirements can vary depending on whether an ambulatory surgical center is registered for one or more other tax types. The

Department desires to maintain flexibility in the requirements in the event of changes in the business structure of individual ambulatory surgical centers and how the assessment is required to be administered in order to meet the needs of the Department of Health Services and to comply with applicable federal regulations, therefore, the recommended detail has not been provided.

- A recommendation was made to specify that the 25% penalty imposed in Tax 1.17 (4) (f) applies for failure to file an amended survey by April 1. Clarification has been provided that the penalty in fact applies for failure to file an original survey by April 1.

Regulatory Flexibility Analysis

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