

Clearinghouse Rule 95-220

CERTIFICATE

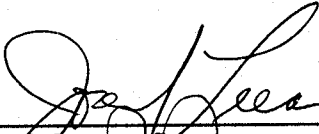
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Joseph Leean, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to review of construction projects that propose to demonstrate the worth of new nursing home designs were duly approved and adopted by this Department on March 29, 1996.

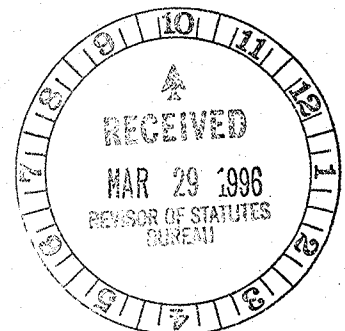
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 29th day of March, 1996.

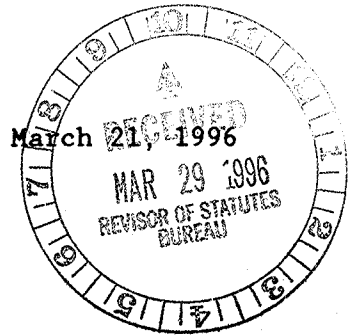
SEAL:



Joseph Leean, Secretary
Department of Health and Social Services



95-220
6-1-96



ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING AND CREATING RULES

To amend HSS 122.06(2), (4) (title), (a) and (d) 1. and 5. and (5) (a) and (b), and to create HSS 122.06(3m) and 122.07(1t) and (2) (at), relating to prior review of projects to demonstrate the worth of new nursing home designs.

Analysis Prepared by the Department of Health and Social Services

A capital expenditure by or on behalf of a nursing home that exceeds \$1,000,000 is subject to prior review and approval by the Department under subch. II of ch. 150, Stats. An approved project has a maximum cost per bed limit computed under s. HSS 122.07(1)(c).

The Legislature in s. 10 of 1993 Wisconsin Act 290 directed the Department to study the issue of the relationship between the design and construction of nursing homes and the formula for determining approvable proposed bed costs under s. HSS 122.07 within the context of health care cost containment.

The Department on January 31, 1995 submitted its report to the Legislature on nursing home design and construction in relation to the formula for determining maximum bed costs. While the study dealt primarily with traditional nursing home designs, the Department stated in the report that its Division of Health was developing rules to permit the study of new nursing home designs which increase capital costs per bed but decrease operating costs. The rules would increase the maximum cost per bed for projects that will permit study of the impact of nursing home design and management approaches on the health of nursing home residents and the cost of care. New nursing home designs may exceed the maximum costs per bed but reduce operating costs.

The Department on November 29, 1995 published the rules by emergency order because of the length of the permanent rulemaking process and also the length of the Department's project approval process which cannot begin until the rules are in effect. The Department sought to act quickly to improve care for nursing home residents and possibly lower the overall costs of care.

These are the permanent rules to replace the emergency rules. Like the emergency rules, they increase the cost per bed maximum for up to three pilot projects that will demonstrate new nursing home designs. They also establish conditions for the announcement and acceptance of applications, criteria for review of applications and a selection process when there are more applicants that meet the requirements for project approval than can be approved.

The Department's authority to amend and create these rules is found in s. 150.03, Stats. The rules interpret subchs. I and II of ch. 150, Stats.

SECTION 1. HSS 122.06(2) is amended to read:

HSS 122.06(2) OTHER APPLICATIONS. Any person intending to engage in activities subject to this subchapter that are not specified under sub. (1) ~~or~~ (3) or (3m) 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 within 365 days after the date the department receives notice of the applicant's intent to engage in the activity.

SECTION 2. HSS 122.06(3m) is created to read:

HSS 122.06(3m) PILOT PROJECTS. The department may at any time solicit applications from nursing homes which seek to demonstrate new nursing home designs. The schedule for submitting applications shall be determined by the department.

SECTION 3. HSS 122.06(4)(title), (a) and (d)1. and 5., (5)(a) and (6) are amended to read:

HSS 122.06(4) (title) PROCESS FOR APPLICATIONS FOR BEDS, APPLICATIONS FROM CENTERS AND APPLICATIONS FOR PILOT PROJECTS. (a) Notice requesting applications. ~~The request for~~ A notice requesting applications for beds under sub. (1) ~~and~~ applications from centers under sub. (3) and applications for pilot projects under sub. (3m) shall be published in a major daily newspaper in each affected planning area on the first and second working days of the month during which requests are to be made. The notice shall state the deadline by which all applications are to be received.

(d) Review for completeness. 1. Each application submitted under sub. (1) ~~or~~ (3) or (3m) shall be reviewed by the department for completeness. An application shall be deemed incomplete if the applicant:

5. Except as provided in subd. 4., the department shall declare all applications ~~for beds~~ under subs. (1) ~~and~~ (3) and (3m) complete 60 days after the date of publication of the request for applications, or 90 days from that date if an application under sub. (1) ~~or~~ (3) or (3m), including any application under sub. (1) or (3m) undergoing concurrent review, was originally declared incomplete and the additional information requested by the department was received within 30 days following the closing date for accepting applications.

(5)(a) Beds, centers and pilot projects. The department shall publish in the ch. 150 newsletter of the office of management and policy and in a major daily newspaper in each affected planning area a list of all complete applications received under sub. (1) ~~or~~ (3) or (3m), listing all applicants and describing their applications, within 20 days after the applications are declared complete. No person submitting an application ~~for new beds~~ may revise the cost or scope of the proposal after a notification of completeness has been made without the written consent of the department.

(6) PUBLIC MEETING. Upon the request of any affected party, the department shall hold a public meeting within 60 days following publication of the list of complete ~~projects~~ applications submitted under sub. (1), (2) ~~or~~, (3) or (3m). This meeting shall be used to elicit testimony from affected parties about applications under review. The department shall maintain minutes or another record of the testimony. All requests for a public meeting shall be received by the department within 10 days after publication of the list of complete applications. The public meeting shall be held prior to the initial finding by the department.

SECTION 4. HSS 122.07 (1t) and (2)(at) are created to read:

HSS 122.07 (1t) REVIEW CRITERIA FOR NURSING HOME DESIGN PILOT PROJECTS. The department, in its review of all applications under s. HSS 122.06(3m) for nursing home design pilot projects, shall use the criteria in sub. (1), with the exception of sub. (1) (c) and (d), and the additional criteria in this subsection. The department may approve no more than 3 projects subject to this subsection. An applicant shall do each of the following:

(a) Document a significant departure from traditional nursing home design;

(b) Document through pilot research or sound academic theory that:

1. The new nursing home design improves the quality of life and care of nursing home residents;

2. The new nursing home design improves productivity of nursing home staff; and

3. There is a need for additional research;

(c) Utilize a minimum of 30 existing nursing facility beds for the research and a comparable control group of nursing facility beds in the traditional nursing home setting within the same licensed facility;

(d) Submit a copy of the written research proposal which documents that the proposal:

1. Has been prepared in conjunction with an established independent research organization; and

2. Will be conducted in conjunction with an established independent researcher;

(e) Document that the study will measure:

1. Outcome effectiveness of the design through:

a. Quality of resident care;

b. Quality of resident life; and

- c. Staff productivity; and
- 2. Impact of design on costs, including:
 - a. Operating costs; and
 - b. Capital costs;
 - (f) Document:
 - 1. The availability and sources of funding for the research proposal;
and
 - 2. The organizational resources committed to the proposed research;
 - (g) Document that the cost per bed will not exceed an amount 45% over the maximum cost per bed as determined in sub. (1)(c);
 - (h) Agree to obtain the written consent to participate in the research from all residents participating in the research or from their guardians; and
 - (i) Document a 92% occupancy rate by reference to the most recent annual survey of nursing homes issued by the department.


(2)(at) Applications under s. HSS 122.06 (3m) which meet all of the applicable criteria in subs. (1), (1m) and (1t) shall be subject to the following selection process:

- 1. If after removing from consideration all applications which fail to meet one or more review criteria, there remain more applications than can be approved for the number of projects allowed under sub. (1t), the department shall rank the remaining applications according to how each meets each applicable review criterion under subs. (1), (1m) and (1t), assigning the lowest number to the application which best meets each criterion.
- 2. The department shall approve projects in order beginning with the lowest score, until all approvable projects are allocated. If there is a tie between applications, the department shall rank those applications based on the best research design.

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), Stats.

Wisconsin Department of Health and
Social Services

Dated: March 29, 1996

By: 
Joseph Lelan
Secretary

SEAL: