

Wisconsin Senate Approves Emergency Services Requirement and Limits Hospital Construction Renovation and Expansion

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Practice Area: Health Law & Real Estate

On Friday, April 5, 2002, the Wisconsin Senate included a measure in its version of the budget that requires hospitals to offer emergency room services, limits expansion of hospital services and prohibits, except in limited circumstances, hospital construction, renovation and expansion. This measure was inspired in part by concerns about high health insurance premiums and by the desire to slow the rise in the State's health care costs. According to the measure's supporters, hospital construction projects and the addition of unneeded services are to blame for the increases.

A budget conference committee, consisting of four members from the Senate and four from the Assembly, is now considering the measure. If the Senate's hospital measure survives the committee, it will be considered by the full legislature as part of the final budget package.

The provisions in the Senate version of this Budget Reconciliation Bill include the following:

- **Mandates Emergency Room Coverage:** The measure requires all hospitals to operate a 24-hour emergency room or have a 24-hour/7 days per week coverage agreement with another hospital that agrees to treat emergency patients. This measure is intended to hinder specialty hospitals which often do not offer emergency services. Psychiatric and rehabilitation hospitals are exempt from this requirement.
- **Limits Hospital Construction and/or Reconstruction:** The measure generally prohibits capital expenditures that increase the number of hospital beds, construction of new hospitals and reconstruction of existing hospitals, with the exception of "critical access hospitals". There are additional exceptions for projects that consolidate hospital facilities without increasing the number of beds; repair damage caused by natural disasters; and repair conditions that threaten safety.
- **Bans Most Renovation Projects:** The measure bans hospital renovations, but allows hospitals to undertake projects that involve providing routine maintenance, improving safety and repairing physical defects.
- **Limits New Hospital Services:** The measure contains a broad prohibition on the expansion of hospital services. The only exceptions are for services provided free or at reduced-cost to the poor.

Application and Effective Dates: All of these restrictions would apply to ambulatory surgery centers except for the ban on increasing beds and the emergency room mandate. The renovation ban would be effective immediately upon passage. Most other provisions would go into effect three months after passage of the final budget.

Recent History

This measure comes on the heels of the Joint Finance Committee's rejection of a bill last month that would have given the Wisconsin Public Service Commission rate-setting authority over hospital charges and certain other approval rights. The defeated bill was also championed by legislators speaking on behalf of business leaders citing rising health care insurance premiums as a major concern. That proposed legislation also included capital expenditure review. The Senate measure passed on April 5 does not.

These proposals are not new to Wisconsin (or other states). Wisconsin has had rate regulation and capital expenditure review periodically over the past 20 years. Because they are viewed as possible solutions to curbing insurance costs, controlling unnecessary growth and maintaining quality, they will likely continue to be part of legislators' attempts to help businesses control costs.

The bill that failed in March would have required the introduction of a new regulatory infrastructure within the Wisconsin Public Service Commission. Some observers believe that in the current budget-strapped environment, the additional costs were reasonable enough for the proposal to fail. However, the bill that the Senate passed on April 5 is so-called "budget-neutral" meaning it does not have any state operation costs directly associated with it. For this reason, it may be viewed more favorably and be easier to accept when compromise is needed as part of developing the final budget bill. It is also important to note that Democrats are not alone in supporting bills that they believe will cut or reduce the growth in health care costs. Republican lawmakers have also expressed an interest in slowing insurance premium increases. Neither party in the legislature is likely to ignore pressure from large employers who bear the brunt of these increases and, of course, Governor McCallum will have veto authority over the final budget.

Action

Hospitals, health care systems and other health care providers that have an interest in this issue either for or against, should engage key policy makers now. The conference committee, which must reconcile differences between the Assembly's proposed budget and the Senate's proposed budget have over 320 items to resolve. The committee has begun its review and negotiations. If you have a position, this is the time to communicate. However, it remains unclear how protracted the negotiations could become. The conference committee, beyond policy differences, faces four significant obstacles: 1) the \$1 billion dollar deficit, 2) reapportionment, 3) an election year, and 4) ongoing District Attorney investigations into "pay to play" allegations. Both Senator Chvala and Speaker Jensen – the principal conference committee negotiators – are widely believed to be the focus of the investigations.

Lawmakers are keenly interested in the legislation's impact on the industry and the connection or the disconnect between construction, renovation, and expansion of services and health insurance premium increases. In addition, as large employers themselves, hospitals, health care systems and other health care providers, have the unique opportunity to voice opinion from both perspectives. Tax exempt health care providers should be aware of the political activity and lobbying restrictions. Generally, political activity (campaigning for public office) is prohibited, but lobbying (affecting legislation) is permissible if it is not a substantial part of activities (15 to 20%).

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