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Reminder: Wisconsin hospital regulations expire July 1, 2016

The current Wisconsin Administrative Code, Chapter DHS 124 is no longer effective as of July 1, 2016.

[2013 Wisconsin Act 236](#) (the Act), enacted April 8, 2014, streamlined the licensing rules and standards that apply to Wisconsin hospitals, Wisconsin Administrative Code, Chapter DHS 124 (DHS 124). The Act requires the Wisconsin Department of Health Services (DHS), the state agency that regulates hospitals in Wisconsin, utilize Medicare's Conditions of Participation for Hospitals (CoPs), the conditions of participation specified under 42 C.F.R. Part 482 or, with respect to critical access hospitals, 42 C.F.R. Part 485, as the minimum standards that apply to hospitals in Wisconsin. Effective July 1, 2016, DHS cannot enforce the standards currently in DHS 124. The Act states that DHS must promulgate rules that repeal and recreate DHS 124, if necessary. The intent of the Act was to eliminate current inconsistencies between the federal and state standards to make compliance easier and more efficient.

Beginning July 1, 2016, DHS must use and enforce the CoPs as the minimum regulatory standards that apply to Wisconsin hospitals. DHS must also use guidelines adopted by the Centers for Medicare and Medicaid Services (CMS) (e.g., [State Operations Manual Appendix A - Survey Protocol, Regulations and Interpretative Guidelines for Hospitals](#)). To date DHS has not repealed and/or recreated DHS 124 or determined that a different interpretation, other than CMS guidelines, is necessary to protect public health and safety in Wisconsin. Thus, the CoPs will govern and the prohibition on enforcement of DHS 124 will be in effect July 1, 2016, until DHS 124 is recreated.

Because the CoPs will be the standard, effective July 1, 2016, DHS will be prohibited from enforcing many of the regulatory standards promulgated by DHS on the construction, maintenance and operation of Wisconsin hospitals, including Subpart II (hospital management), Subpart III (medical staff) and Subpart IV (hospital required services) in DHS 124.

Other significant changes affecting Wisconsin hospitals in the Act include the following:

- **Psychiatric Hospitals.** DHS may use and enforce the CoPs in 42 C.F.R. § 482.60 as the standards that apply to psychiatric hospitals, which are hospitals primarily engaged in providing psychiatric services for the diagnosis and treatment of persons who have mental illness.
- **Physicians and Dentists.** Prior to the Act, Wisconsin's hospital rules and standards provided that nothing in DHS's promulgated rules or standards governing hospitals shall pertain to persons licensed to practice medicine and surgery or dentistry. This restriction was removed.
- **Capital Construction and Remodeling Plan Reviews.** Prior to the Act, the building codes and construction standards of the Department of Safety and Professional Services (DSPS) applied to all hospitals, and DHS could adopt additional standards so long as such standards were not lower than the requirements of DSPS. Now the standards of DSPS apply only to the extent they are not incompatible with any building codes or construction

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standards required by the CoPs. The Act retains the requirement that DHS conduct plan reviews of capital construction and remodeling projects, it and retains DHS's authority to promulgate rules establishing a fee schedule for the plan reviews, but eliminates the restrictions on amounts in the fee schedule.

- **Hospital Staff Privileges.** Prior to the Act, any person licensed to practice medicine and surgery or podiatry under Wisconsin Statutes Chapter 448 had to be given an equal opportunity to obtain hospital staff privileges and could not be denied hospital staff privileges solely for the reason that the person was an osteopathic physician and surgeon or a podiatrist. In addition, a hospital that admitted patients for mental illness treatment could grant psychologists hospital staff privileges. However, prior to or at the time of hospital admission of a patient, the psychologist or the hospital was required to identify an appropriate physician with admitting privileges at the hospital who would be responsible for the medical evaluation and medical management of the patient for the duration of his or her hospitalization. The Act provides generally that a hospital may afford any practitioner the opportunity to be a member of the hospital staff and obtain hospital staff privileges if the membership or privileges are not otherwise prohibited by CoPs or Wisconsin rules and standards and are consistent with the practitioner's scope of practice. Further, the Act repeals the special provisions on the granting of hospital staff privileges to psychologists.
- **Hospital Accreditation.** Hospitals accredited by an approved national accrediting organization are exempt from routine inspections and investigations by state regulators and are considered to be in compliance with all Wisconsin regulatory standards.
- **Variations and Waivers.** The Act provides that the Secretary or designee may grant a variance or waiver to a statute or rule if he or she determines that the variance or waiver is necessary to protect the public health, safety or welfare, or to support the efficient and economic operation of the hospital. The Act eliminates the provision that a variance may be granted only if the Secretary or designee determines that a disaster has occurred. Lastly, the Act allows, but does not require, the variance or waiver to be for a stated term.

Godfrey & Kahn recommends that all of our hospital clients review and update their policies and procedures for compliance with the new law.

If you have questions regarding 2013 Wisconsin Act 236, Chapter DHS 124, or the Conditions of Medicare Participation for Hospitals, please contact:

- Tom Shorter at (608) 284-2239 or at tshorter@gklaw.com, or
- Your regular Godfrey & Kahn attorney.

Please see previous Godfrey & Kahn guidance on this topic [here](#) or subscribe today to receive regular updates from our Health Care Team [here](#).

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