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SECOND SUBSTITUTE HOUSE BILL 1330

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State of Washington

54th Legislature

1995 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Dyer, Dellwo and Backlund; by request of Department of Health)

Read first time 03/06/95.

1 AN ACT Relating to health facilities and services; amending RCW  
2 70.38.025, 70.38.105, 70.38.115, and 70.38.135; creating new sections;  
3 decodifying RCW 70.38.155, 70.38.156, 70.38.157, 70.38.914, 70.38.915,  
4 70.38.916, 70.38.917, 70.38.918, and 70.38.919; repealing RCW  
5 70.38.095; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 70.38.025 and 1991 c 158 s 1 are each amended to read  
8 as follows:

9 When used in this chapter, the terms defined in this section shall  
10 have the meanings indicated.

11 (1) "Board of health" means the state board of health created  
12 pursuant to chapter 43.20 RCW.

13 (2) "Capital expenditure" is an expenditure, including a force  
14 account expenditure (i.e., an expenditure for a construction project  
15 undertaken by a nursing home facility as its own contractor) which,  
16 under generally accepted accounting principles, is not properly  
17 chargeable as an expense of operation or maintenance. Where a person  
18 makes an acquisition under lease or comparable arrangement, or through  
19 donation, which would have required review if the acquisition had been

1 made by purchase, such expenditure shall be deemed a capital  
2 expenditure. Capital expenditures include donations of equipment or  
3 facilities to a nursing home facility which if acquired directly by  
4 such facility would be subject to certificate of need review under the  
5 provisions of this chapter and transfer of equipment or facilities for  
6 less than fair market value if a transfer of the equipment or  
7 facilities at fair market value would be subject to such review. The  
8 cost of any studies, surveys, designs, plans, working drawings,  
9 specifications, and other activities essential to the acquisition,  
10 improvement, expansion, or replacement of any plant or equipment with  
11 respect to which such expenditure is made shall be included in  
12 determining the amount of the expenditure.

13 (3) "Continuing care retirement community" means an entity which  
14 provides shelter and services under continuing care contracts with its  
15 members and which sponsors or includes a health care facility or a  
16 health service. A "continuing care contract" means a contract to  
17 provide a person, for the duration of that person's life or for a term  
18 in excess of one year, shelter along with nursing, medical, health-  
19 related, or personal care services, which is conditioned upon the  
20 transfer of property, the payment of an entrance fee to the provider of  
21 such services, or the payment of periodic charges for the care and  
22 services involved. A continuing care contract is not excluded from  
23 this definition because the contract is mutually terminable or because  
24 shelter and services are not provided at the same location.

25 (4) "Department" means the department of health.

26 (5) "Expenditure minimum" means, for the purposes of the  
27 certificate of need program, one million dollars adjusted by the  
28 department by rule to reflect changes in the United States department  
29 of commerce composite construction cost index; or a lesser amount  
30 required by federal law and established by the department by rule.

31 (6) "Health care facility" means hospices, (~~hospitals, psychiatric~~  
32 ~~hospitals,~~) nursing homes, kidney disease treatment centers,  
33 (~~ambulatory surgical facilities,~~) and home health agencies except  
34 those home health agencies operated by a hospital district in a county  
35 with a population under twenty thousand, and includes such facilities  
36 when owned and operated by a political subdivision or instrumentality  
37 of the state and such other facilities as required by federal law and  
38 implementing regulations, but does not include Christian Science  
39 sanatoriums operated, listed, or certified by the First Church of

1 Christ Scientist, Boston, Massachusetts. In addition, the term does  
2 not include any nonprofit hospital: (a) Which is operated exclusively  
3 to provide health care services for children; (b) which does not charge  
4 fees for such services; and (c) if not contrary to federal law as  
5 necessary to the receipt of federal funds by the state.

6 (7) "Health maintenance organization" means a public or private  
7 organization, organized under the laws of the state, which:

8 (a) Is a qualified health maintenance organization under Title  
9 XIII, section 1310(d) of the Public Health Services Act; or

10 (b)(i) Provides or otherwise makes available to enrolled  
11 participants health care services, including at least the following  
12 basic health care services: Usual physician services, hospitalization,  
13 laboratory, x-ray, emergency, and preventive services, and out-of-area  
14 coverage; (ii) is compensated (except for copayments) for the provision  
15 of the basic health care services listed in (b)(i) to enrolled  
16 participants by a payment which is paid on a periodic basis without  
17 regard to the date the health care services are provided and which is  
18 fixed without regard to the frequency, extent, or kind of health  
19 service actually provided; and (iii) provides physicians' services  
20 primarily (A) directly through physicians who are either employees or  
21 partners of such organization, or (B) through arrangements with  
22 individual physicians or one or more groups of physicians (organized on  
23 a group practice or individual practice basis).

24 (8) "Health services" means clinically related (i.e., preventive,  
25 diagnostic, curative, rehabilitative, or palliative) services and  
26 includes alcoholism, drug abuse, and mental health services and as  
27 defined in federal law.

28 (9) "Health service area" means a geographic region appropriate for  
29 effective health planning which includes a broad range of health  
30 services.

31 (10) "Person" means an individual, a trust or estate, a  
32 partnership, a corporation (including associations, joint stock  
33 companies, and insurance companies), the state, or a political  
34 subdivision or instrumentality of the state, including a municipal  
35 corporation or a hospital district.

36 (11) "Provider" (~~generally~~) means a health care professional or  
37 an organization, institution, or other entity providing health care  
38 (~~but the precise definition for this term shall be established by rule~~  
39 ~~of the department, consistent with federal law~~)).

1 (12) "Public health" means the level of well-being of the general  
2 population; those actions in a community necessary to preserve,  
3 protect, and promote the health of the people for which government is  
4 responsible; and the governmental system developed to guarantee the  
5 preservation of the health of the people.

6 (13) "Secretary" means the secretary of health or the secretary's  
7 designee.

8 (14) "Tertiary health service" means a specialized service that  
9 meets complicated medical needs of people and requires sufficient  
10 patient volume to optimize provider effectiveness, quality of service,  
11 and improved outcomes of care.

12 (~~(15) "Hospital" means any health care institution which is  
13 required to qualify for a license under RCW 70.41.020(2); or as a  
14 psychiatric hospital under chapter 71.12 RCW.~~)

15 **Sec. 2.** RCW 70.38.105 and 1992 c 27 s 1 are each amended to read  
16 as follows:

17 (1) The department is authorized and directed to implement the  
18 certificate of need program in this state pursuant to the provisions of  
19 this chapter.

20 (2) There shall be a state certificate of need program which is  
21 administered consistent with the requirements of federal law as  
22 necessary to the receipt of federal funds by the state.

23 (3) No person shall engage in any undertaking which is subject to  
24 certificate of need review under subsection (4) of this section without  
25 first having received from the department either a certificate of need  
26 or an exception granted in accordance with this chapter.

27 (4) The following shall be subject to certificate of need review  
28 under this chapter:

29 (a) The construction, development, or other establishment of a new  
30 health care facility;

31 (b) (~~The sale, purchase, or lease of part or all of any existing  
32 hospital as defined in RCW 70.38.025;~~

33 ~~(c))~~ Any capital expenditure for the construction, renovation, or  
34 alteration of a nursing home which substantially changes the services  
35 of the facility (~~after January 1, 1981,~~) provided that the  
36 substantial changes in services are specified by the department in  
37 rule;

1       ~~((d))~~ (c) Any capital expenditure for the construction,  
2 renovation, or alteration of a nursing home which exceeds the  
3 expenditure minimum as defined by RCW 70.38.025. However, a capital  
4 expenditure which is not subject to certificate of need review under  
5 (a), (b), ~~((e),)~~ or ~~((e))~~ (d) of this subsection and which is  
6 solely for any one or more of the following is not subject to  
7 certificate of need review except to the extent required by the federal  
8 government as a condition to receipt of federal assistance and does not  
9 substantially affect patient charges:

10       (i) Communications and parking facilities;

11       (ii) Mechanical, electrical, ventilation, heating, and air  
12 conditioning systems;

13       (iii) Energy conservation systems;

14       (iv) Repairs to, or the correction of, deficiencies in existing  
15 physical plant facilities which are necessary to maintain state  
16 licensure;

17       (v) Acquisition of equipment, including data processing equipment,  
18 which is not or will not be used in the direct provision of health  
19 services;

20       (vi) Construction which involves physical plant facilities,  
21 including administrative and support facilities, which are not or will  
22 not be used for the provision of health services;

23       (vii) Acquisition of land; and

24       (viii) Refinancing of existing debt;

25       ~~((e))~~ (d) A change in bed capacity of a health care facility  
26 which increases the total number of licensed beds or redistributes beds  
27 among acute care, nursing home care, and boarding home care if the bed  
28 redistribution is to be effective for a period in excess of six months,  
29 or a change in bed capacity of a rural health care facility licensed  
30 under RCW 70.175.100 that increases the total number of nursing home  
31 beds or redistributes beds from acute care or boarding home care to  
32 nursing home care if the bed redistribution is to be effective for a  
33 period in excess of six months;

34       ~~((f))~~ (e) Any new tertiary health services which are offered in  
35 or through a health care facility or rural health care facility  
36 licensed under RCW 70.175.100~~((, and which were not offered on a~~  
37 ~~regular basis by, in, or through such health care facility or rural~~  
38 ~~health care facility within the twelve month period prior to the time~~  
39 ~~such services would be offered;~~

1       ~~(g) Any expenditure for the construction, renovation, or alteration~~  
2 ~~of a nursing home or change in nursing home services in excess of the~~  
3 ~~expenditure minimum made in preparation for any undertaking under~~  
4 ~~subsection (4) of this section and any arrangement or commitment made~~  
5 ~~for financing such undertaking. Expenditures of preparation shall~~  
6 ~~include expenditures for architectural designs, plans, working~~  
7 ~~drawings, and specifications. The department may issue certificates of~~  
8 ~~need permitting predevelopment expenditures, only, without authorizing~~  
9 ~~any subsequent undertaking with respect to which such predevelopment~~  
10 ~~expenditures are made)); and~~

11       ~~((h))~~ (f) Any increase in the number of dialysis stations in a  
12 kidney disease center.

13       (5) The department is authorized to charge fees for the review of  
14 certificate of need applications and requests for exemptions from  
15 certificate of need review. The fees shall be sufficient to cover the  
16 full cost of review and exemption, which may include the development of  
17 standards, criteria, and policies.

18       (6) No person may divide a project in order to avoid review  
19 requirements under any of the thresholds specified in this section.

20       **Sec. 3.** RCW 70.38.115 and 1993 c 508 s 6 are each amended to read  
21 as follows:

22       (1) Certificates of need shall be issued, denied, suspended, or  
23 revoked by the designee of the secretary in accord with the provisions  
24 of this chapter and rules of the department which establish review  
25 procedures and criteria for the certificate of need program.

26       (2) Criteria for the review of certificate of need applications,  
27 except as provided in subsection (3) of this section for health  
28 maintenance organizations, shall include but not be limited to  
29 consideration of the following:

30       (a) The need that the population served or to be served by such  
31 services has for such services;

32       (b) The availability of less costly or more effective alternative  
33 methods of providing such services;

34       (c) The financial feasibility and the probable impact of the  
35 proposal on the cost of and charges for providing health services in  
36 the community to be served;

37       (d) In the case of health services to be provided, (i) the  
38 availability of alternative uses of project resources for the provision

1 of other health services, (ii) the extent to which such proposed  
2 services will be accessible to all residents of the area to be served,  
3 and (iii) the need for and the availability in the community of  
4 services and facilities for osteopathic and allopathic physicians and  
5 their patients. The department shall consider the application in terms  
6 of its impact on existing and proposed institutional training programs  
7 for doctors of osteopathy and medicine at the student, internship, and  
8 residency training levels;

9 (e) In the case of a construction project, the costs and methods of  
10 the proposed construction, including the cost and methods of energy  
11 provision, and the probable impact of the construction project reviewed  
12 (i) on the cost of providing health services by the person proposing  
13 such construction project and (ii) on the cost and charges to the  
14 public of providing health services by other persons;

15 ~~(f) ((The special needs and circumstances of osteopathic hospitals,~~  
16 ~~nonallopathic services and children's hospitals;~~

17 ~~(g))) Improvements or innovations in the financing and delivery of~~  
18 ~~health services which foster cost containment and serve to promote~~  
19 ~~quality assurance and cost-effectiveness;~~

20 ~~((h))) (g) In the case of health services proposed to be provided,~~  
21 ~~the efficiency and appropriateness of the use of existing services and~~  
22 ~~facilities similar to those proposed;~~

23 ~~((i))) (h) In the case of existing services or facilities, the~~  
24 ~~quality of care provided by such services or facilities in the past;~~  
25 ~~and~~

26 ~~((j) In the case of hospital certificate of need applications,~~  
27 ~~whether the hospital meets or exceeds the regional average level of~~  
28 ~~charity care, as determined by the secretary; and~~

29 ~~(k))) (i) In the case of nursing home applications:~~

30 (i) The availability of other nursing home beds in the planning  
31 area to be served; and

32 (ii) The availability of other services in the community to be  
33 served. Data used to determine the availability of other services will  
34 include but not be limited to data provided by the department of social  
35 and health services.

36 (3) A certificate of need application of a health maintenance  
37 organization or a health care facility which is controlled, directly or  
38 indirectly, by a health maintenance organization, shall be approved by  
39 the department if the department finds:

1 (a) Approval of such application is required to meet the needs of  
2 the members of the health maintenance organization and of the new  
3 members which such organization can reasonably be expected to enroll;  
4 and

5 (b) The health maintenance organization is unable to provide,  
6 through services or facilities which can reasonably be expected to be  
7 available to the organization, its health services in a reasonable and  
8 cost-effective manner which is consistent with the basic method of  
9 operation of the organization and which makes such services available  
10 on a long-term basis through physicians and other health professionals  
11 associated with it.

12 A health care facility, or any part thereof, with respect to which  
13 a certificate of need was issued under this subsection may not be sold  
14 or leased and a controlling interest in such facility or in a lease of  
15 such facility may not be acquired unless the department issues a  
16 certificate of need approving the sale, acquisition, or lease.

17 ~~(4) ((Until the final expiration of the state health plan as  
18 provided under RCW 70.38.919, the decision of the department on a  
19 certificate of need application shall be consistent with the state  
20 health plan in effect, except in emergency circumstances which pose a  
21 threat to the public health.))~~ The department in making its final  
22 decision may issue a conditional certificate of need if it finds that  
23 the project is justified only under specific circumstances. The  
24 conditions shall directly relate to the project being reviewed. The  
25 conditions may be released if it can be substantiated that the  
26 conditions are no longer valid and the release of such conditions would  
27 be consistent with the purposes of this chapter.

28 (5) Criteria adopted for review in accordance with subsection (2)  
29 of this section may vary according to the purpose for which the  
30 particular review is being conducted or the type of health service  
31 reviewed.

32 (6) The department shall specify information to be required for  
33 certificate of need applications. Within fifteen days of receipt of  
34 the application, the department shall request additional information  
35 considered necessary to the application or start the review process.  
36 Applicants may decline to submit requested information through written  
37 notice to the department, in which case review starts on the date of  
38 receipt of the notice. Applications may be denied or limited because  
39 of failure to submit required and necessary information.

1 (7) Concurrent review is for the purpose of comparative analysis  
2 and evaluation of competing or similar projects in order to determine  
3 which of the projects may best meet identified needs. Categories of  
4 projects subject to concurrent review include at least new health care  
5 facilities, new services, and expansion of existing health care  
6 facilities. The department shall specify time periods for the  
7 submission of applications for certificates of need subject to  
8 concurrent review, which shall not exceed ninety days. Review of  
9 concurrent applications shall start fifteen days after the conclusion  
10 of the time period for submission of applications subject to concurrent  
11 review. Concurrent review periods shall be limited to one hundred  
12 fifty days, except as provided for in rules adopted by the department  
13 authorizing and limiting amendment during the course of the review, or  
14 for an unresolved pivotal issue declared by the department.

15 (8) Review periods for certificate of need applications other than  
16 those subject to concurrent review shall be limited to ninety days.  
17 Review periods may be extended up to thirty days if needed by a review  
18 agency, and for unresolved pivotal issues the department may extend up  
19 to an additional thirty days. A review may be extended in any case if  
20 the applicant agrees to the extension.

21 (9) The department or its designee, shall conduct a public hearing  
22 on a certificate of need application if requested, unless the review is  
23 expedited or subject to emergency review. The department by rule shall  
24 specify the period of time within which a public hearing must be  
25 requested and requirements related to public notice of the hearing,  
26 procedures, recordkeeping and related matters.

27 (10) Any applicant denied a certificate of need or whose  
28 certificate of need has been suspended or revoked has the right to an  
29 adjudicative proceeding. The proceeding is governed by chapter 34.05  
30 RCW, the Administrative Procedure Act.

31 (11) An amended certificate of need shall be required for the  
32 following modifications of an approved project:

- 33 ~~((a) A new service requiring review under this chapter;~~  
34 ~~(b) An expansion of a service subject to review beyond that~~  
35 ~~originally approved;~~  
36 ~~(c) An increase in bed capacity;~~

37 ~~(d))~~ A significant reduction in the scope of a nursing home  
38 project without a commensurate reduction in the cost of the nursing  
39 home project, or a cost increase (as represented in bids on a nursing

1 home construction project or final cost estimates acceptable to the  
2 person to whom the certificate of need was issued) if the total of such  
3 increases exceeds twelve percent or fifty thousand dollars, whichever  
4 is greater, over the maximum capital expenditure approved. The review  
5 of reductions or cost increases shall be restricted to the continued  
6 conformance of the nursing home project with the review criteria  
7 pertaining to financial feasibility and cost containment.

8 (12) An application for a certificate of need for a nursing home  
9 capital expenditure which is determined by the department to be  
10 required to eliminate or prevent imminent safety hazards or correct  
11 violations of applicable licensure and accreditation standards shall be  
12 approved.

13 (13) In the case of an application for a certificate of need to  
14 replace existing nursing home beds, all criteria must be met on the  
15 same basis as an application for a certificate of need for a new  
16 nursing home, except that the need criteria shall be deemed met if the  
17 applicant is an existing licensee who proposes to replace existing beds  
18 that the licensee has operated for at least one year with the same or  
19 fewer number of beds in the same planning area. When an entire nursing  
20 home ceases operation, its beds shall be treated as existing nursing  
21 home beds for purposes of replacement for eight years or until a  
22 certificate of need to replace them is issued, whichever occurs first.  
23 However, the nursing home must give notice of its intent to retain the  
24 beds to the department of health no later than thirty days after the  
25 effective date of the facility's closure.

26 **Sec. 4.** RCW 70.38.135 and 1989 1st ex.s. c 9 s 607 are each  
27 amended to read as follows:

28 The secretary shall have authority to:

29 (1) (~~Provide when needed~~) Contract for temporary or intermittent  
30 services of experts or consultants or organizations (~~thereof, by~~  
31 ~~contract, when such services are to be performed on a part time or fee-~~  
32 ~~for service basis~~);

33 (2) Make or cause to be made such on-site surveys of health care or  
34 medical facilities as may be necessary for the administration of the  
35 certificate of need program;

36 (3) (~~Upon review of recommendations, if any, from the board of~~  
37 ~~health~~;

1       ~~(a))~~ Promulgate rules under which health care ~~((facilities))~~  
2 providers doing business within the state shall submit to the  
3 department such data ~~((related to health and health care))~~ as the  
4 department finds necessary to the performance of its functions under  
5 this chapter;

6       ~~((b))~~ (4) Promulgate rules pertaining to the maintenance and  
7 operation of medical facilities which receive federal assistance under  
8 the provisions of Title XVI;

9       ~~((c))~~ (5) Promulgate rules in implementation of the provisions of  
10 this chapter, including the establishment of procedures for public  
11 hearings for predecisions and post-decisions on applications for  
12 certificate of need; and

13       ~~((d))~~ (6) Promulgate rules providing circumstances and procedures  
14 of expedited certificate of need review if there has not been a  
15 significant change in existing health facilities of the same type or in  
16 the need for such health facilities and services(~~(+~~

17       ~~(4) Grant allocated state funds to qualified entities, as defined~~  
18 ~~by the department, to fund not more than seventy five percent of the~~  
19 ~~costs of regional planning activities, excluding costs related to~~  
20 ~~review of applications for certificates of need, provided for in this~~  
21 ~~chapter or approved by the department; and~~

22       ~~(5) Contract with and provide reasonable reimbursement for~~  
23 ~~qualified entities to assist in determinations of certificates of~~  
24 ~~need)).~~

25       NEW SECTION.   **Sec. 5.**   RCW 70.38.155, 70.38.156, 70.38.157,  
26 70.38.914, 70.38.915, 70.38.916, 70.38.917, 70.38.918, and 70.38.919  
27 are each decodified.

28       NEW SECTION.   **Sec. 6.**   RCW 70.38.095 and 1979 ex.s. c 161 s 9 are  
29 each repealed.

30       NEW SECTION.   **Sec. 7.**   The department of health, in cooperation  
31 with the house of representatives health care committee, shall evaluate  
32 the state's future role in identifying and evaluating community needs  
33 and capacity for health facilities and services. By December 1, 1995,  
34 the department shall provide recommendations on what, if any, system  
35 needs to be maintained that assists communities to make informed  
36 decisions regarding the need for future services and facilities. The

1 study shall include, but not be limited to, evaluating data from other  
2 states that have discontinued certificate of need, evaluate appropriate  
3 levels and provision of charity care in acute settings, looking at such  
4 factors as medicaid/medicare reimbursement rates, usage rates of  
5 facilities according to population and payer factors, and other  
6 indirect indicators of changes in accessibility and quality.

7 NEW SECTION. **Sec. 8.** (1) The enactment of this act shall not have  
8 the effect of terminating, or in any way modifying, the validity of any  
9 certificate of need that shall already have been issued before July 1,  
10 1996.

11 (2) Any certificate of need application that was submitted and  
12 declared complete, but upon which final action had not been taken  
13 before July 1, 1996, shall be renewed and action taken based on chapter  
14 70.38 RCW as in effect before July 1, 1996.

15 NEW SECTION. **Sec. 9.** If any part of this act is found to be in  
16 conflict with federal requirements that are a prescribed condition to  
17 the allocation of federal funds to the state, the conflicting part of  
18 this act is inoperative solely to the extent of the conflict and with  
19 respect to the agencies directly affected, and this finding does not  
20 affect the operation of the remainder of this act in its application to  
21 the agencies concerned. The rules under this act shall meet federal  
22 requirements that are a necessary condition to the receipt of federal  
23 funds by the state.

24 NEW SECTION. **Sec. 10.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 11.** Sections 1 through 6 and 8 of this act  
29 shall take effect July 1, 1996.

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