

2 SHB 1586 - S COMM AMD

3 By Committee on Health & Long-Term Care

4 Adopted 4/15/91 - Voice Vote

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 70.38.025 and 1989 1st ex.s. c 9 s 602 are each  
8 amended to read 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  
20 made by purchase, such expenditure shall be deemed a capital  
21 expenditure. Capital expenditures include donations of equipment or  
22 facilities to a nursing home facility which if acquired directly by  
23 such facility would be subject to certificate of need review under the  
24 provisions of this chapter and transfer of equipment or facilities for  
25 less than fair market value if a transfer of the equipment or  
26 facilities at fair market value would be subject to such review. The  
27 cost of any studies, surveys, designs, plans, working drawings,  
28 specifications, and other activities essential to the acquisition,

1 improvement, expansion, or replacement of any plant or equipment with  
2 respect to which such expenditure is made shall be included in  
3 determining the amount of the expenditure.

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

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

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

22 (6) "Health care facility" means hospices, hospitals, psychiatric  
23 hospitals, nursing homes, kidney disease treatment centers, ambulatory  
24 surgical facilities, (~~continuing care retirement communities,~~) and  
25 home health agencies, and includes such facilities when owned and  
26 operated by a political subdivision or instrumentality of the state and  
27 such other facilities as required by federal law and implementing  
28 regulations, but does not include Christian Science sanatoriums  
29 operated, listed, or certified by the First Church of Christ Scientist,  
30 Boston, Massachusetts. In addition, the term does not include any

1 nonprofit hospital: (a) Which is operated exclusively to provide health  
2 care services for children; (b) which does not charge fees for such  
3 services; and (c) if not contrary to federal law as necessary to the  
4 receipt of federal funds by the state. ((In addition, the term does not  
5 include a continuing care retirement community which: (i) Offers  
6 services only to contractual members; and (ii) provides its members a  
7 contractually guaranteed range of services from independent living  
8 through skilled nursing, including some form of assistance with  
9 activities of daily living; and (iii) contractually assumes  
10 responsibility for costs of services exceeding the member's financial  
11 responsibility as stated in contract, so that, with the exception of  
12 insurance purchased by the retirement community or its members, no  
13 third party, including the medicaid program, is liable for costs of  
14 care even if the member depletes his or her personal resources; and  
15 (iv) has offered continuing care contracts and operated a nursing home  
16 continuously since January 1, 1988, or has obtained a certificate of  
17 need to establish a nursing home; and (v) maintains a binding agreement  
18 with the department of social and health services assuring that  
19 financial liability for services to members, including nursing home  
20 services, shall not fall upon the department of social and health  
21 services; and (vi) does not operate, and has not undertaken, a project  
22 which would result in a number of nursing home beds in excess of one  
23 for every four living units operated by the continuing care retirement  
24 community, exclusive of nursing home beds; and (vii) has undertaken no  
25 increase in the total number of nursing home beds after January 1,  
26 1988, unless a professional review of pricing and long term solvency  
27 was obtained by the retirement community within the prior five years  
28 and fully disclosed to members.))

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

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

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

17 (8) "Health services" means clinically related (i.e., preventive,  
18 diagnostic, curative, rehabilitative, or palliative) services and  
19 includes alcoholism, drug abuse, and mental health services and as  
20 defined in federal law.

21 (9) "Health service area" means a geographic region appropriate for  
22 effective health planning which includes a broad range of health  
23 services.

24 (10) "Person" means an individual, a trust or estate, a  
25 partnership, a corporation (including associations, joint stock  
26 companies, and insurance companies), the state, or a political  
27 subdivision or instrumentality of the state, including a municipal  
28 corporation or a hospital district.

29 (11) "Provider" generally means a health care professional or an  
30 organization, institution, or other entity providing health care but

1 the precise definition for this term shall be established by rule of  
2 the department, consistent with federal law.

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

8 (13) "Secretary" means the secretary of health or the secretary's  
9 designee.

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

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

17 **"Sec. 2.** RCW 70.38.111 and 1989 1st ex.s. c 9 s 604 are each  
18 amended to read as follows:

19 (1) The department shall not require a certificate of need for the  
20 offering of an inpatient tertiary health service by:

21 (a) A health maintenance organization or a combination of health  
22 maintenance organizations if (i) the organization or combination of  
23 organizations has, in the service area of the organization or the  
24 service areas of the organizations in the combination, an enrollment of  
25 at least fifty thousand individuals, (ii) the facility in which the  
26 service will be provided is or will be geographically located so that  
27 the service will be reasonably accessible to such enrolled individuals,  
28 and (iii) at least seventy-five percent of the patients who can  
29 reasonably be expected to receive the tertiary health service will be

1 individuals enrolled with such organization or organizations in the  
2 combination;

3 (b) A health care facility if (i) the facility primarily provides  
4 or will provide inpatient health services, (ii) the facility is or will  
5 be controlled, directly or indirectly, by a health maintenance  
6 organization or a combination of health maintenance organizations which  
7 has, in the service area of the organization or service areas of the  
8 organizations in the combination, an enrollment of at least fifty  
9 thousand individuals, (iii) the facility is or will be geographically  
10 located so that the service will be reasonably accessible to such  
11 enrolled individuals, and (iv) at least seventy-five percent of the  
12 patients who can reasonably be expected to receive the tertiary health  
13 service will be individuals enrolled with such organization or  
14 organizations in the combination; or

15 (c) A health care facility (or portion thereof) if (i) the facility  
16 is or will be leased by a health maintenance organization or  
17 combination of health maintenance organizations which has, in the  
18 service area of the organization or the service areas of the  
19 organizations in the combination, an enrollment of at least fifty  
20 thousand individuals and, on the date the application is submitted  
21 under subsection (2) of this section, at least fifteen years remain in  
22 the term of the lease, (ii) the facility is or will be geographically  
23 located so that the service will be reasonably accessible to such  
24 enrolled individuals, and (iii) at least seventy-five percent of the  
25 patients who can reasonably be expected to receive the tertiary health  
26 service will be individuals enrolled with such organization;

27 if, with respect to such offering or obligation by a nursing home, the  
28 department has, upon application under subsection (2) of this section,  
29 granted an exemption from such requirement to the organization,  
30 combination of organizations, or facility.

1       (2) A health maintenance organization, combination of health  
2 maintenance organizations, or health care facility shall not be exempt  
3 under subsection (1) of this section from obtaining a certificate of  
4 need before offering a tertiary health service unless:

5       (a) It has submitted at least thirty days prior to the offering of  
6 services reviewable under RCW 70.38.105(4)(d) an application for such  
7 exemption; and

8       (b) The application contains such information respecting the  
9 organization, combination, or facility and the proposed offering or  
10 obligation by a nursing home as the department may require to determine  
11 if the organization or combination meets the requirements of subsection  
12 (1) of this section or the facility meets or will meet such  
13 requirements; and

14       (c) The department approves such application. The department shall  
15 approve or disapprove an application for exemption within thirty days  
16 of receipt of a completed application. In the case of a proposed  
17 health care facility (or portion thereof) which has not begun to  
18 provide tertiary health services on the date an application is  
19 submitted under this subsection with respect to such facility (or  
20 portion), the facility (or portion) shall meet the applicable  
21 requirements of subsection (1) of this section when the facility first  
22 provides such services. The department shall approve an application  
23 submitted under this subsection if it determines that the applicable  
24 requirements of subsection (1) of this section are met.

25       (3) A health care facility (or any part thereof) with respect to  
26 which an exemption was granted under subsection (1) of this section may  
27 not be sold or leased and a controlling interest in such facility or in  
28 a lease of such facility may not be acquired and a health care facility  
29 described in (1)(c) which was granted an exemption under subsection (1)

1 of this section may not be used by any person other than the lessee  
2 described in (1)(c) unless:

3 (a) The department issues a certificate of need approving the sale,  
4 lease, acquisition, or use; or

5 (b) The department determines, upon application, that (i) the  
6 entity to which the facility is proposed to be sold or leased, which  
7 intends to acquire the controlling interest, or which intends to use  
8 the facility is a health maintenance organization or a combination of  
9 health maintenance organizations which meets the requirements of  
10 (1)(a)(i), and (ii) with respect to such facility, meets the  
11 requirements of (1)(a) (ii) or (iii) or the requirements of (1)(b) (i)  
12 and (ii).

13 (4) In the case of a health maintenance organization, an ambulatory  
14 care facility, or a health care facility, which ambulatory or health  
15 care facility is controlled, directly or indirectly, by a health  
16 maintenance organization or a combination of health maintenance  
17 organizations, the department may under the program apply its  
18 certificate of need requirements only to the offering of inpatient  
19 tertiary health services and then only to the extent that such offering  
20 is not exempt under the provisions of this section.

21 (5)(a) The department shall not require a certificate of need for  
22 the construction, development, or other establishment of a nursing  
23 home, or the addition of beds to an existing nursing home, that is  
24 owned and operated by a continuing care retirement community that:

25 (i) Offers services only to contractual members;

26 (ii) Provides its members a contractually guaranteed range of  
27 services from independent living through skilled nursing, including  
28 some assistance with daily living activities;

29 (iii) Contractually assumes responsibility for the cost of services  
30 exceeding the member's financial responsibility under the contract, so



1 that no third party, with the exception of insurance purchased by the  
2 retirement community or its members, but including the medicaid  
3 program, is liable for costs of care even if the member depletes his or  
4 her personal resources;

5 (iv) Has offered continuing care contracts and operated a nursing  
6 home continuously since January 1, 1988, or has obtained a certificate  
7 of need to establish a nursing home;

8 (v) Maintains a binding agreement with the state assuring that  
9 financial liability for services to members, including nursing home  
10 services, will not fall upon the state;

11 (vi) Does not operate, and has not undertaken a project that would  
12 result in a number of nursing home beds in excess of one for every four  
13 living units operated by the continuing care retirement community,  
14 exclusive of nursing home beds; and

15 (vii) Has obtained a professional review of pricing and long-term  
16 solvency within the prior five years which was fully disclosed to  
17 members.

18 (b) A continuing care retirement community shall not be exempt  
19 under this subsection from obtaining a certificate of need unless:

20 (i) It has submitted an application for exemption at least thirty  
21 days prior to commencing construction of, is submitting an application  
22 for the licensure of, or is commencing operation of a nursing home,  
23 whichever comes first; and

24 (ii) The application documents to the department that the  
25 continuing care retirement community qualifies for exemption.

26 (c) The sale, lease, acquisition, or use of part or all of a  
27 continuing care retirement community nursing home that qualifies for  
28 exemption under this subsection shall require prior certificate of need  
29 approval to qualify for licensure as a nursing home unless the  
30 department determines such sale, lease, acquisition, or use is by a

1 continuing care retirement community that meets the conditions of (a)  
2 of this subsection."

3 **SHB 1586** - S COMM AMD

4 By Committee on Health & Long-Term Care

5 Adopted 4/15/91 - Voice Vote

6 On page 1, line 1 of the title, after "communities;" strike the  
7 remainder of the title and insert "and amending RCW 70.38.025 and  
8 70.38.111."