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HOUSE BILL 1126

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State of Washington

52nd Legislature

1991 Regular Session

By Representatives Braddock and Orr; by request of Dept. of Social and Health Services.

Read first time January 21, 1991. Referred to Committee on Health Care.

1 AN ACT Relating to utilization review of nursing facilities;  
2 amending RCW 43.190.020, 70.38.105, 74.08.044, 74.09.250, 74.09.260,  
3 74.09.510, 74.09.700, and 18.51.310; reenacting and amending RCW  
4 74.09.520; and repealing RCW 74.42.610.

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

6 **Sec. 1.** RCW 43.190.020 and 1983 c 290 s 2 are each amended to read  
7 as follows:

8 As used in this chapter, "long-term care facility" means any of the  
9 following which provide services to persons sixty years of age and  
10 older and is:

11 (1) A facility which:

12 (a) Maintains and operates twenty-four hour skilled nursing  
13 services for the care and treatment of chronically ill or convalescent  
14 patients, including mental, emotional, or behavioral problems, mental  
15 retardation, or alcoholism;

1 (b) Provides supportive, restorative, and preventive health  
2 services in conjunction with a socially oriented program to its  
3 residents, and which maintains and operates twenty-four hour services  
4 including board, room, personal care, and intermittent nursing care.  
5 "Long-term health care facility" includes nursing (~~homes, skilled~~  
6 ~~nursing facilities, and intermediate care~~) facilities, but does not  
7 include acute care hospital or other licensed facilities except for  
8 that distinct part of the hospital or facility which provides nursing  
9 (~~home, skilled nursing facility, or intermediate care~~) facility  
10 services.

11 (2) Any family home, group care facility, or similar facility  
12 determined by the secretary, for twenty-four hour nonmedical care of  
13 persons in need of personal services, supervision, or assistance  
14 essential for sustaining the activities of daily living or for the  
15 protection of the individual.

16 (3) Any swing bed in an acute care facility.

17 **Sec. 2.** RCW 70.38.105 and 1989 1st ex.s. c 9 s 603 are each  
18 amended to read as follows:

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

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

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

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

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

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

7 (c) Any capital expenditure for the construction, renovation, or  
8 alteration of a nursing home which substantially changes the services  
9 of the facility after January 1, 1981, provided that the substantial  
10 changes in services are specified by the department in rule;

11 (d) Any capital expenditure for the construction, renovation, or  
12 alteration of a nursing home which exceeds the expenditure minimum as  
13 defined by RCW 70.38.025. However, a capital expenditure which is not  
14 subject to certificate of need review under (a), (b), (c), or (e) of  
15 this subsection and which is solely for any one or more of the  
16 following is not subject to certificate of need review except to the  
17 extent required by the federal government as a condition to receipt of  
18 federal assistance and does not substantially affect patient charges:

19 (i) Communications and parking facilities;

20 (ii) Mechanical, electrical, ventilation, heating, and air  
21 conditioning systems;

22 (iii) Energy conservation systems;

23 (iv) Repairs to, or the correction of, deficiencies in existing  
24 physical plant facilities which are necessary to maintain state  
25 licensure;

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

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

4 (vii) Acquisition of land; and

5 (viii) Refinancing of existing debt;

6 (e) A change in bed capacity of a health care facility which  
7 increases the total number of licensed beds or redistributes beds among  
8 acute care, ((skilled)) nursing((, —intermediate)) care, and boarding  
9 home care if the bed redistribution is to be effective for a period in  
10 excess of six months;

11 (f) Any new tertiary health services which are offered in or  
12 through a health care facility, and which were not offered on a regular  
13 basis by, in, or through such health care facility within the twelve-  
14 month period prior to the time such services would be offered;

15 (g) Any expenditure for the construction, renovation, or alteration  
16 of a nursing home or change in nursing home services in excess of the  
17 expenditure minimum made in preparation for any undertaking under  
18 subsection (4) of this section and any arrangement or commitment made  
19 for financing such undertaking. Expenditures of preparation shall  
20 include expenditures for architectural designs, plans, working  
21 drawings, and specifications. The department may issue certificates of  
22 need permitting predevelopment expenditures, only, without authorizing  
23 any subsequent undertaking with respect to which such predevelopment  
24 expenditures are made; and

25 (h) Any increase in the number of dialysis stations in a kidney  
26 disease center.

27 (5) The department is authorized to charge fees for the review of  
28 certificate of need applications and requests for exemptions from  
29 certificate of need review. The fees shall be sufficient to cover the

1 full cost of review and exemption, which may include the development of  
2 standards, criteria, and policies.

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

5 **Sec. 3.** RCW 74.08.044 and 1975-'76 2nd ex.s. c 52 s 1 are each  
6 amended to read as follows:

7 The department is authorized to promulgate rules and regulations  
8 establishing eligibility for alternate living arrangements, and license  
9 the same, including minimum standards of care, based upon need for  
10 personal care and supervision beyond the level of board and room only,  
11 but less than the level of care required in a hospital or a ((skilled))  
12 nursing ((home)) facility as defined in the federal social security  
13 act.

14 **Sec. 4.** RCW 74.09.250 and 1979 ex.s. c 152 s 6 are each amended to  
15 read as follows:

16 Any person, including any corporation, that knowingly makes or  
17 causes to be made, or induces or seeks to induce the making of, any  
18 false statement or representation of a material fact with respect to  
19 the conditions or operations of any institution or facility in order  
20 that such institution or facility may qualify (either upon initial  
21 certification or upon recertification) as a hospital, ((skilled))  
22 nursing facility, ((intermediate care facility,)) or home health  
23 agency, shall be guilty of a class C felony: PROVIDED, That the fine,  
24 if imposed, shall not be in an amount more than five thousand dollars.

25 **Sec. 5.** RCW 74.09.260 and 1979 ex.s. c 152 s 7 are each amended to  
26 read as follows:

27 Any person, including any corporation, that knowingly:

1 (1) Charges, for any service provided to a patient under any  
2 medical care plan authorized under this chapter, money or other  
3 consideration at a rate in excess of the rates established by the  
4 department of social and health services(~~(  )~~)i or

5 (2) Charges, solicits, accepts, or receives, in addition to any  
6 amount otherwise required to be paid under such plan, any gift, money,  
7 donation, or other consideration (other than a charitable, religious,  
8 or philanthropic contribution from an organization or from a person  
9 unrelated to the patient)i:

10 (a) As a precondition of admitting a patient to a hospital(~~(~~  
11 ~~skilled))~~ or nursing facility(~~(  or intermediate care facility)~~)i or

12 (b) As a requirement for the patient's continued stay in such  
13 facility,

14 when the cost of the services provided therein to the patient is paid  
15 for, in whole or in part, under such plan, shall be guilty of a class  
16 C felony: PROVIDED, That the fine, if imposed, shall not be in an  
17 amount more than twenty-five thousand dollars, except as authorized by  
18 RCW 9A.20.030.

19 **Sec. 6.** RCW 74.09.510 and 1989 1st ex.s. c 10 s 8 are each amended  
20 to read as follows:

21 Medical assistance may be provided in accordance with eligibility  
22 requirements established by the department of social and health  
23 services, as defined in the social security Title XIX state plan for  
24 mandatory categorically needy persons and: (1) Individuals who would  
25 be eligible for cash assistance except for their institutional status;  
26 (2) individuals who are under twenty-one years of age, who would be  
27 eligible for aid to families with dependent children, but do not  
28 qualify as dependent children and who are in (a) foster care, (b)  
29 subsidized adoption, (c) (~~(an intermediate care))~~ a nursing facility or

1 an intermediate care facility for the mentally retarded, or (d)  
2 inpatient psychiatric facilities; (3) the aged, blind, and disabled  
3 who: (a) Receive only a state supplement, or (b) would not be eligible  
4 for cash assistance if they were not institutionalized; (4) individuals  
5 who would be eligible for but choose not to receive cash assistance;  
6 (5) individuals who are enrolled in managed health care systems, who  
7 have otherwise lost eligibility for medical assistance, but who have  
8 not completed a current six-month enrollment in a managed health care  
9 system, and who are eligible for federal financial participation under  
10 Title XIX of the social security act; (6) children and pregnant women  
11 allowed by federal statute for whom funding is appropriated; and (7)  
12 other individuals eligible for medical services under RCW 74.09.035 and  
13 74.09.700 for whom federal financial participation is available under  
14 Title XIX of the social security act.

15       **Sec. 7.** RCW 74.09.520 and 1990 c 33, s 594, & 1990 c 25 s 1 are  
16 each reenacted and amended to read as follows:

17       (1) The term "medical assistance" may include the following care  
18 and services: (a) Inpatient hospital services; (b) outpatient hospital  
19 services; (c) other laboratory and x-ray services; (d) (~~skilled~~)  
20 nursing (~~home~~) facility services; (e) physicians' services, which  
21 shall include prescribed medication and instruction on birth control  
22 devices; (f) medical care, or any other type of remedial care as may be  
23 established by the secretary; (g) home health care services; (h)  
24 private duty nursing services; (i) dental services; (j) physical  
25 therapy and related services; (k) prescribed drugs, dentures, and  
26 prosthetic devices; and eyeglasses prescribed by a physician skilled in  
27 diseases of the eye or by an optometrist, whichever the individual may  
28 select; (l) personal care services, as provided in this section; (m)  
29 hospice services; (n) other diagnostic, screening, preventive, and

1 rehabilitative services; and (o) like services when furnished to a  
2 handicapped child by a school district as part of an individualized  
3 education program established pursuant to RCW 28A.155.010 through  
4 28A.155.100. For the purposes of this section, the department may not  
5 cut off any prescription medications, oxygen supplies, respiratory  
6 services, or other life-sustaining medical services or supplies.

7 "Medical assistance," notwithstanding any other provision of law,  
8 shall not include routine foot care, or dental services delivered by  
9 any health care provider, that are not mandated by Title XIX of the  
10 social security act unless there is a specific appropriation for these  
11 services. Services included in an individualized education program for  
12 a handicapped child under RCW 28A.155.010 through 28A.155.100 shall not  
13 qualify as medical assistance prior to the implementation of the  
14 funding process developed under RCW 74.09.524.

15 (2) The department shall amend the state plan for medical  
16 assistance under Title XIX of the federal social security act to  
17 include personal care services, as defined in 42 C.F.R. 440.170(f), in  
18 the categorically needy program.

19 (3) The department shall adopt, amend, or rescind such  
20 administrative rules as are necessary to ensure that Title XIX personal  
21 care services are provided to eligible persons in conformance with  
22 federal regulations.

23 (a) These administrative rules shall include financial eligibility  
24 indexed according to the requirements of the social security act  
25 providing for medicaid eligibility.

26 (b) The rules shall require clients be assessed as having a medical  
27 condition requiring assistance with personal care tasks. Plans of care  
28 must be approved by a physician and reviewed by a nurse every ninety  
29 days.



1 (4) The department shall design and implement a means to assess the  
2 level of functional disability of persons eligible for personal care  
3 services under this section. The personal care services benefit shall  
4 be provided to the extent funding is available according to the  
5 assessed level of functional disability. Any reductions in services  
6 made necessary for funding reasons should be accomplished in a manner  
7 that assures that priority for maintaining services is given to persons  
8 with the greatest need as determined by the assessment of functional  
9 disability.

10 (5) The department shall report to the appropriate fiscal  
11 committees of the legislature on the utilization and associated costs  
12 of the personal care option under Title XIX of the federal social  
13 security act, as defined in 42 C.F.R. 440.170(f), in the categorically  
14 needy program. This report shall be submitted by January 1, 1990, and  
15 submitted on a yearly basis thereafter.

16 (6) Effective July 1, 1989, the department shall offer hospice  
17 services in accordance with available funds. The department shall  
18 provide a complete accounting of the costs of providing hospice  
19 services under this section by December 20, 1990. The report shall  
20 include an assessment of cost savings which may result by providing  
21 hospice to persons who otherwise would use hospitals, nursing homes, or  
22 more expensive care. The hospice benefit under this section shall  
23 terminate on June 30, 1991, unless extended by the legislature.

24 **Sec. 8.** RCW 74.09.700 and 1989 c 87 s 3 are each amended to read  
25 as follows:

26 (1) To the extent of available funds, medical care may be provided  
27 under the limited casualty program to persons not otherwise eligible  
28 for medical assistance or medical care services who are medically needy  
29 as defined in the social security Title XIX state plan and medical

1 indigents in accordance with medical eligibility requirements  
2 established by the department. This includes residents of (~~skilled~~)  
3 nursing (~~homes, intermediate care~~) facilities(~~(7)~~) and residents of  
4 intermediate care facilities for the mentally retarded who are aged,  
5 blind, or disabled as defined in Title XVI of the federal social  
6 security act and whose income exceeds three hundred percent of the  
7 federal supplement security income benefit level.

8 (2) Determination of the amount, scope, and duration of medical  
9 coverage under the limited casualty program shall be the responsibility  
10 of the department, subject to the following:

11 (a) Only inpatient hospital services; outpatient hospital and rural  
12 health clinic services; physicians' and clinic services; prescribed  
13 drugs, dentures, prosthetic devices, and eyeglasses; (~~skilled~~)  
14 nursing (~~home~~) facility services (~~(7, intermediate care facility~~  
15 ~~services, and)~~); intermediate care facility services for the mentally  
16 retarded; home health services; other laboratory and x-ray services;  
17 rehabilitative services; medically necessary transportation; and other  
18 services for which funds are specifically provided in the omnibus  
19 appropriations act shall be covered;

20 (b) Persons who are medically indigent and are not eligible for a  
21 federal aid program shall satisfy a deductible of not less than one  
22 hundred dollars nor more than five hundred dollars in any twelve-month  
23 period;

24 (c) Medical care services provided to the medically indigent and  
25 received no more than seven days prior to the date of application shall  
26 be retroactively certified and approved for payment on behalf of a  
27 person who was otherwise eligible at the time the medical services were  
28 furnished: PROVIDED, That eligible persons who fail to apply within the  
29 seven-day time period for medical reasons or other good cause may be  
30 retroactively certified and approved for payment.

1 (3) The department shall establish standards of assistance and  
2 resource and income exemptions. All nonexempt income and resources of  
3 limited casualty program recipients shall be applied against the cost  
4 of their medical care services.

5 **Sec. 9.** RCW 18.51.310 and 1981 2nd ex.s. c 11 s 5 are each amended  
6 to read as follows:

7 ~~(1) ((Within thirty days of admission, the department shall~~  
8 ~~evaluate, through review and assessment, the comprehensive plan of care~~  
9 ~~for each resident supported by the department under RCW 74.09.120 as~~  
10 ~~now or hereafter amended.~~

11 ~~(2) The department shall review the comprehensive plan of care for~~  
12 ~~such resident at least annually or upon any change in the resident's~~  
13 ~~classification.~~

14 ~~(3) Based upon the assessment of the resident's needs, the~~  
15 ~~department shall assign such resident to a classification.~~  
16 ~~Developmentally disabled residents shall be classified under a separate~~  
17 ~~system.~~

18 ~~(4) The nursing home shall submit any request to modify a~~  
19 ~~resident's classification to the department for the department's~~  
20 ~~approval. The approval shall not be given until the department has~~  
21 ~~reviewed the resident.~~

22 ~~(5))~~ The department shall establish, in compliance with federal  
23 and state law, a comprehensive plan for utilization review as necessary  
24 to safeguard against unnecessary utilization of care and services and  
25 to assure quality care and services provided to nursing facility  
26 residents.

27 (2) The department shall adopt licensing standards suitable for  
28 implementing the civil penalty system authorized under this chapter and  
29 chapter 74.46 RCW.

1        (~~(6)~~) (3) No later than July 1, 1981, the department shall adopt  
2 all those regulations which meet all conditions necessary to fully  
3 implement the civil penalty system authorized by this chapter, chapter  
4 74.42 RCW, and chapter 74.46 RCW.

5        NEW SECTION.    **Sec. 10.**        RCW 74.42.610 and 1980 c 177 s 85 &  
6 1979 ex.s. c 211 s 61 are each repealed.