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**SUBSTITUTE HOUSE BILL 1586**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Health Care (originally sponsored by Representatives D. Sommers, Prentice, Moyer, Paris, Braddock and Franklin).

Read first time March 1, 1991.

1            AN ACT Relating to continuing care retirement communities; and  
2 amending RCW 70.38.025 and 70.38.111.

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

4            **Sec. 1.** RCW 70.38.025 and 1989 1st ex.s. c 9 s 602 are each  
5 amended to read as follows:

6            When used in this chapter, the terms defined in this section shall  
7 have the meanings indicated.

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

10           (2) "Capital expenditure" is an expenditure, including a force  
11 account expenditure (i.e., an expenditure for a construction project  
12 undertaken by a nursing home facility as its own contractor) which,  
13 under generally accepted accounting principles, is not properly  
14 chargeable as an expense of operation or maintenance. Where a person  
15 makes an acquisition under lease or comparable arrangement, or through

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

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

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

27 (5) "Expenditure minimum" means, for the purposes of the  
28 certificate of need program, one million dollars adjusted by the  
29 department by rule to reflect changes in the United States department

1 of commerce composite construction cost index; or a lesser amount  
2 required by federal law and established by the department by rule.

3 (6) "Health care facility" means hospices, hospitals, psychiatric  
4 hospitals, nursing homes, kidney disease treatment centers, ambulatory  
5 surgical facilities, ~~((continuing care retirement communities,))~~  
6 rehabilitation facilities, and home health agencies, and includes such  
7 facilities when owned and operated by a political subdivision or  
8 instrumentality of the state and such other facilities as required by  
9 federal law and implementing regulations, but does not include  
10 Christian Science sanatoriums operated, listed, or certified by the  
11 First Church of Christ Scientist, Boston, Massachusetts. In addition,  
12 the term does not include any nonprofit hospital: (a) Which is operated  
13 exclusively to provide health care services for children; (b) which  
14 does not charge fees for such services; and (c) if not contrary to  
15 federal law as necessary to the receipt of federal funds by the state.  
16 ~~((In addition, the term does not include a continuing care retirement  
17 community which: (i) Offers services only to contractual members; and  
18 (ii) provides its members a contractually guaranteed range of services  
19 from independent living through skilled nursing, including some form of  
20 assistance with activities of daily living; and (iii) contractually  
21 assumes responsibility for costs of services exceeding the member's  
22 financial responsibility as stated in contract, so that, with the  
23 exception of insurance purchased by the retirement community or its  
24 members, no third party, including the medicaid program, is liable for  
25 costs of care even if the member depletes his or her personal  
26 resources; and (iv) has offered continuing care contracts and operated  
27 a nursing home continuously since January 1, 1988, or has obtained a  
28 certificate of need to establish a nursing home; and (v) maintains a  
29 binding agreement with the department of social and health services  
30 assuring that financial liability for services to members, including~~

1 ~~nursing home services, shall not fall upon the department of social and~~  
2 ~~health services; and (vi) does not operate, and has not undertaken, a~~  
3 ~~project which would result in a number of nursing home beds in excess~~  
4 ~~of one for every four living units operated by the continuing care~~  
5 ~~retirement community, exclusive of nursing home beds; and (vii) has~~  
6 ~~undertaken no increase in the total number of nursing home beds after~~  
7 ~~January 1, 1988, unless a professional review of pricing and long term~~  
8 ~~solvency was obtained by the retirement community within the prior five~~  
9 ~~years and fully disclosed to members.))~~

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

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

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

28 (8) "Health services" means clinically related (i.e., preventive,  
29 diagnostic, curative, rehabilitative, or palliative) services and

1 includes alcoholism, drug abuse, and mental health services and as  
2 defined in federal law.

3 (9) "Health service area" means a geographic region appropriate for  
4 effective health planning which includes a broad range of health  
5 services.

6 (10) "Person" means an individual, a trust or estate, a  
7 partnership, a corporation (including associations, joint stock  
8 companies, and insurance companies), the state, or a political  
9 subdivision or instrumentality of the state, including a municipal  
10 corporation or a hospital district.

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

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

20 (13) "Secretary" means the secretary of health or the secretary's  
21 designee.

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

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

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

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

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

16       (b) A health care facility if (i) the facility primarily provides  
17 or will provide inpatient health services, (ii) the facility is or will  
18 be controlled, directly or indirectly, by a health maintenance  
19 organization or a combination of health maintenance organizations which  
20 has, in the service area of the organization or service areas of the  
21 organizations in the combination, an enrollment of at least fifty  
22 thousand individuals, (iii) the facility is or will be geographically  
23 located so that the service will be reasonably accessible to such  
24 enrolled individuals, and (iv) 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 or  
27 organizations in the combination; or

28       (c) A health care facility (or portion thereof) if (i) the facility  
29 is or will be leased by a health maintenance organization or  
30 combination of health maintenance organizations which has, in the

1 service area of the organization or the service areas of the  
2 organizations in the combination, an enrollment of at least fifty  
3 thousand individuals and, on the date the application is submitted  
4 under subsection (2) of this section, at least fifteen years remain in  
5 the term of the lease, (ii) the facility is or will be geographically  
6 located so that the service will be reasonably accessible to such  
7 enrolled individuals, and (iii) at least seventy-five percent of the  
8 patients who can reasonably be expected to receive the tertiary health  
9 service will be individuals enrolled with such organization;  
10 if, with respect to such offering or obligation by a nursing home, the  
11 department has, upon application under subsection (2) of this section,  
12 granted an exemption from such requirement to the organization,  
13 combination of organizations, or facility.

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

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

21 (b) The application contains such information respecting the  
22 organization, combination, or facility and the proposed offering or  
23 obligation by a nursing home as the department may require to determine  
24 if the organization or combination meets the requirements of subsection  
25 (1) of this section or the facility meets or will meet such  
26 requirements; and

27 (c) The department approves such application. The department shall  
28 approve or disapprove an application for exemption within thirty days  
29 of receipt of a completed application. In the case of a proposed  
30 health care facility (or portion thereof) which has not begun to

1 provide tertiary health services on the date an application is  
2 submitted under this subsection with respect to such facility (or  
3 portion), the facility (or portion) shall meet the applicable  
4 requirements of subsection (1) of this section when the facility first  
5 provides such services. The department shall approve an application  
6 submitted under this subsection if it determines that the applicable  
7 requirements of subsection (1) of this section are met.

8 (3) A health care facility (or any part thereof) with respect to  
9 which an exemption was granted under subsection (1) of this section may  
10 not be sold or leased and a controlling interest in such facility or in  
11 a lease of such facility may not be acquired and a health care facility  
12 described in (1)(c) which was granted an exemption under subsection (1)  
13 of this section may not be used by any person other than the lessee  
14 described in (1)(c) unless:

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

17 (b) The department determines, upon application, that (i) the  
18 entity to which the facility is proposed to be sold or leased, which  
19 intends to acquire the controlling interest, or which intends to use  
20 the facility is a health maintenance organization or a combination of  
21 health maintenance organizations which meets the requirements of  
22 (1)(a)(i), and (ii) with respect to such facility, meets the  
23 requirements of (1)(a) (ii) or (iii) or the requirements of (1)(b) (i)  
24 and (ii).

25 (4) In the case of a health maintenance organization, an ambulatory  
26 care facility, or a health care facility, which ambulatory or health  
27 care facility is controlled, directly or indirectly, by a health  
28 maintenance organization or a combination of health maintenance  
29 organizations, the department may under the program apply its  
30 certificate of need requirements only to the offering of inpatient



1 tertiary health services and then only to the extent that such offering  
2 is not exempt under the provisions of this section.

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

8 (i) Offers services only to contractual members;

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

12 (iii) Contractually assumes responsibility for the cost of services  
13 exceeding the member's financial responsibility under the contract, so  
14 that no third party, with the exception of insurance purchased by the  
15 retirement community or its members, but including the medicaid  
16 program, is liable for costs of care even if the member depletes his or  
17 her personal resources;

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

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

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

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

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

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

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

9       (c) The sale, lease, acquisition, or use of part or all of a  
10 continuing care retirement community nursing home that qualifies for  
11 exemption under this subsection shall require prior certificate of need  
12 approval to qualify for licensure as a nursing home unless the  
13 department determines such sale, lease, acquisition, or use is by a  
14 continuing care retirement community that meets the conditions of (a)  
15 of this subsection.