
SUBSTITUTE SENATE BILL 6076

State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators West, M. Kreidler, Amondson and Barr; by request of Department of Health)

Read first time 02/04/92.

1 AN ACT Relating to rural health care facilities; amending RCW
2 70.38.105, 70.38.111, 70.41.090, and 70.175.130; and adding a new
3 section to chapter 70.175 RCW.

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

5 **Sec. 1.** RCW 70.38.105 and 1991 sp.s. c 8 s 4 are each amended to
6 read as follows:

7 (1) The department is authorized and directed to implement the
8 certificate of need program in this state pursuant to the provisions of
9 this chapter.

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

13 (3) No person shall engage in any undertaking which is subject to
14 certificate of need review under subsection (4) of this section without

1 first having received from the department either a certificate of need
2 or an exception granted in accordance with this chapter.

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

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

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

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

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

21 (i) Communications and parking facilities;

22 (ii) Mechanical, electrical, ventilation, heating, and air
23 conditioning systems;

24 (iii) Energy conservation systems;

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

28 (v) Acquisition of equipment, including data processing equipment,
29 which is not or will not be used in the direct provision of health
30 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, nursing home care, and boarding home care if the bed
9 redistribution is to be effective for a period in excess of six months,
10 or a change in bed capacity of a rural health care facility licensed
11 under RCW 70.175.100 that increases the total number of nursing home
12 beds or redistributes beds from acute care or boarding home care to
13 nursing home care if the bed redistribution is to be effective for a
14 period in excess of six months;

15 (f) Any new tertiary health services which are offered in or
16 through a health care facility or rural health care facility licensed
17 under RCW 70.175.100, and which were not offered on a regular basis by,
18 in, or through such health care facility or rural health care facility
19 within the twelve-month period prior to the time such services would be
20 offered;

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

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

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

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

10 **Sec. 2.** RCW 70.38.111 and 1991 c 158 s 2 are each amended to read
11 as follows:

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

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

25 (b) A health care facility if (i) the facility primarily provides
26 or will provide inpatient health services, (ii) the facility is or will
27 be controlled, directly or indirectly, by a health maintenance
28 organization or a combination of health maintenance organizations which
29 has, in the service area of the organization or service areas of the

1 organizations in the combination, an enrollment of at least fifty
2 thousand individuals, (iii) the facility is or will be geographically
3 located so that the service will be reasonably accessible to such
4 enrolled individuals, and (iv) at least seventy-five percent of the
5 patients who can reasonably be expected to receive the tertiary health
6 service will be individuals enrolled with such organization or
7 organizations in the combination; or

8 (c) A health care facility (or portion thereof) if (i) the facility
9 is or will be leased by a health maintenance organization or
10 combination of health maintenance organizations which has, in the
11 service area of the organization or the service areas of the
12 organizations in the combination, an enrollment of at least fifty
13 thousand individuals and, on the date the application is submitted
14 under subsection (2) of this section, at least fifteen years remain in
15 the term of the lease, (ii) the facility is or will be geographically
16 located so that the service will be reasonably accessible to such
17 enrolled individuals, and (iii) at least seventy-five percent of the
18 patients who can reasonably be expected to receive the tertiary health
19 service will be individuals enrolled with such organization;
20 if, with respect to such offering or obligation by a nursing home, the
21 department has, upon application under subsection (2) of this section,
22 granted an exemption from such requirement to the organization,
23 combination of organizations, or facility.

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

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

1 (b) The application contains such information respecting the
2 organization, combination, or facility and the proposed offering or
3 obligation by a nursing home as the department may require to determine
4 if the organization or combination meets the requirements of subsection
5 (1) of this section or the facility meets or will meet such
6 requirements; and

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

18 (3) A health care facility (or any part thereof) with respect to
19 which an exemption was granted under subsection (1) of this section may
20 not be sold or leased and a controlling interest in such facility or in
21 a lease of such facility may not be acquired and a health care facility
22 described in (1)(c) which was granted an exemption under subsection (1)
23 of this section may not be used by any person other than the lessee
24 described in (1)(c) unless:

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

27 (b) The department determines, upon application, that (i) the
28 entity to which the facility is proposed to be sold or leased, which
29 intends to acquire the controlling interest, or which intends to use
30 the facility is a health maintenance organization or a combination of

1 health maintenance organizations which meets the requirements of
2 (1)(a)(i), and (ii) with respect to such facility, meets the
3 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
4 and (ii).

5 (4) In the case of a health maintenance organization, an ambulatory
6 care facility, or a health care facility, which ambulatory or health
7 care facility is controlled, directly or indirectly, by a health
8 maintenance organization or a combination of health maintenance
9 organizations, the department may under the program apply its
10 certificate of need requirements only to the offering of inpatient
11 tertiary health services and then only to the extent that such offering
12 is not exempt under the provisions of this section.

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

17 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

19 (c) The sale, lease, acquisition, or use of part or all of a
20 continuing care retirement community nursing home that qualifies for
21 exemption under this subsection shall require prior certificate of need
22 approval to qualify for licensure as a nursing home unless the
23 department determines such sale, lease, acquisition, or use is by a
24 continuing care retirement community that meets the conditions of (a)
25 of this subsection.

26 (6) A rural hospital, as defined by the department, reducing the
27 number of licensed beds to become a rural primary care hospital under
28 the provisions of Part A Title XVIII of the Social Security Act Section
29 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
30 of beds licensed under chapter 70.41 RCW, increase the number of

1 licensed beds to no more than the previously licensed number without
2 being subject to the provisions of this chapter.

3 (7) A rural health care facility licensed under RCW 70.175.100
4 formerly licensed as a hospital under chapter 70.41 RCW may, within
5 three years of the effective date of the rural health care facility
6 license, apply to the department for a hospital license and not be
7 subject to the requirements of RCW 70.38.105(4)(a) as the construction,
8 development, or other establishment of a new hospital, provided there
9 is no increase in the number of beds previously licensed under chapter
10 70.41 RCW and there is no redistribution in the number of beds used for
11 acute care or long-term care, the rural health care facility has been
12 in continuous operation, and the rural health care facility has not
13 been purchased or leased.

14 **Sec. 3.** RCW 70.41.090 and 1989 1st ex.s. c 9 s 611 are each
15 amended to read as follows:

16 (1) No person or governmental unit of the state of Washington,
17 acting separately or jointly with any other person or governmental
18 unit, shall establish, maintain, or conduct a hospital in this state,
19 or use the word "hospital" to describe or identify an institution,
20 without a license under this chapter: PROVIDED, That the provisions of
21 this section shall not apply to state mental institutions and
22 psychiatric hospitals which come within the scope of chapter 71.12 RCW.

23 (2) After June 30, 1989, no hospital shall initiate a tertiary
24 health service as defined in RCW 70.38.025(14) unless it has received
25 a certificate of need as provided in RCW 70.38.105 and 70.38.115.

26 (3) A rural health care facility licensed under RCW 70.175.100
27 formerly licensed as a hospital under this chapter may, within three
28 years of the effective date of the rural health care facility license,
29 apply to the department for a hospital license and not be required to

1 meet certificate of need requirements under chapter 70.38 RCW as a new
2 health care facility and not be required to meet new construction
3 requirements as a new hospital under this chapter. These exceptions
4 are subject to the following: The facility at the time of initial
5 conversion was considered by the department to be in compliance with
6 the hospital licensing rules and the condition of the physical plant
7 and equipment is equal to or exceeds the level of compliance that
8 existed at the time of conversion to a rural health care facility. The
9 department shall inspect and determine compliance with the hospital
10 rules prior to reissuing a hospital license.

11 A rural hospital, as defined by the department, reducing the number
12 of licensed beds to become a rural primary care hospital under the
13 provisions of Part A Title XVIII of the Social Security Act Section
14 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
15 of licensed beds, increase the number of beds licensed under this
16 chapter to no more than the previously licensed number of beds without
17 being subject to the provisions of chapter 70.38 RCW and without being
18 required to meet new construction requirements under this chapter.
19 These exceptions are subject to the following: The facility at the
20 time of the reduction in licensed beds was considered by the department
21 to be in compliance with the hospital licensing rules and the condition
22 of the physical plant and equipment is equal to or exceeds the level of
23 compliance that existed at the time of the reduction in licensed beds.
24 The department may inspect and determine compliance with the hospital
25 rules prior to increasing the hospital license.

26 **Sec. 4.** RCW 70.175.130 and 1990 c 271 s 18 are each amended to
27 read as follows:

28 The department may develop and implement a rural health care plan
29 and may approve hospital and rural health care facility requests to be

1 designated as essential access community hospitals or rural primary
2 care hospitals so that such facilities may form rural health networks
3 to preserve health care services in rural areas and thereby be eligible
4 for federal program funding and enhanced medicare reimbursement. The
5 department may monitor any rural health care plan and designated
6 facilities to assure continued compliance with the rural health care
7 plan.

8 NEW SECTION. Sec. 5. A new section is added to chapter 70.175 RCW
9 to read as follows:

10 Any licensee or applicant desiring to make alterations or additions
11 to its facilities or to construct new facilities may contact the
12 department for consultative advice before commencing such alteration,
13 addition, or new construction.