
SUBSTITUTE HOUSE BILL 2098

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Health Care (originally sponsored by Representative Valle; by request of Department of Social and Health Services)

Read first time 04/08/93.

1 AN ACT Relating to options in long-term care; nursing homes-
2 resident care, operating standards; health planning and development;
3 amending RCW 74.42.010 and 70.38.111; reenacting and amending RCW
4 70.38.115; adding a new chapter to Title 74 RCW; creating a new
5 section; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that the
8 aging of the population and advanced medical technology have resulted
9 in a growing number of functionally disabled persons who require
10 assistance. The primary resource for long-term care continues to be
11 family and friends. However, these traditional caregivers are
12 increasingly employed outside the home. There is a growing demand for
13 improvement and expansion of home and community-based long-term care
14 services to support and complement the services provided by these
15 informal caregivers.

16 The legislature finds that while high quality nursing homes are
17 required for those who need that level of care, the long-term care
18 system must provide a complete array of necessary services to meet

1 people's needs in the least-restrictive, most-appropriate and cost-
2 effective setting.

3 The legislature further finds that the public interest would be
4 best served by a well balanced long-term care system that supports
5 functionally disabled persons at home or in the community whenever
6 practicable and which promotes individual autonomy, dignity, and choice
7 among a wide range of cost-effective services.

8 The legislature finds that as other long-term care options become
9 more available, the relative need for nursing home beds is likely to
10 decline. The legislature recognizes, however, that nursing home care
11 will continue to be a critical part of the state's long-term care
12 system, and that such services should promote individual dignity,
13 autonomy, and a homelike environment.

14 NEW SECTION. **Sec. 2.** PURPOSE AND INTENT. It is the legislature's
15 intent that:

16 (1) Long-term care services administered by the aging and adult
17 services administration of the department of social and health services
18 include a balanced array of health, social, and supportive services
19 that promote individual choice, dignity, and the highest practicable
20 level of independence;

21 (2) Home and community-based services be developed, expanded, or
22 maintained in order to meet the needs of consumers and to maximize
23 effective use of limited resources;

24 (3) Long-term care services be responsive and appropriate to
25 individual need and also cost-effective for the state;

26 (4) Nursing home care is provided in such a manner and in such an
27 environment as will promote maintenance or enhancement of the quality
28 of life of each resident and timely discharge to a less restrictive
29 care setting when appropriate; and

30 (5) State health planning for nursing home bed supply take into
31 account increased availability of other home and community-based
32 service options.

33 NEW SECTION. **Sec. 3.** COMPREHENSIVE PROGRAM. (1) The secretary of
34 the department of social and health services, through the aging and
35 adult services administration, shall administer a state-wide
36 comprehensive long-term care program that responds to consumer needs
37 and preferences. The comprehensive long-term care program administered

1 through the aging and adult services administration shall include but
2 not be limited to:

3 (a) Chore services, under RCW 74.08.541;

4 (b) Medicaid personal care, under RCW 74.09.520;

5 (c) COPES medicaid waiver services, under chapter 74.09 RCW;

6 (d) Adult family homes, under RCW 70.128.175;

7 (e) Assisted living, under this chapter;

8 (f) Private duty nursing, under RCW 74.09.520;

9 (g) Congregate care facilities, under RCW 74.08.045;

10 (h) Respite care, under chapter 74.41 RCW; and

11 (i) Nursing homes, under chapter 18.51 RCW.

12 (2) The aging and adult services administration shall develop long-
13 term care service system that enable functionally disabled clients to
14 live at home or in nonmedical residential settings for as long as
15 practicable and cost-effective.

16 (3) The secretary of the department of social and health services
17 shall report by December 1 of every even-numbered year to the
18 appropriate committees of the house of representatives and the senate
19 regarding the system of care delivery for persons receiving long-term
20 care services administered through aging and adult services
21 administration. The report shall include:

22 (a) Recommendations regarding cost-saving measures that can be
23 combined with improved care delivery;

24 (b) A review of the effect of current state payment rates on the
25 state-wide availability of such services; and

26 (c) A review, made in consultation with the department of health,
27 of obstacles to expanded availability of needed services.

28 NEW SECTION. **Sec. 4.** ASSISTED LIVING. To the extent of available
29 funding, the department of social and health services may contract with
30 licensed boarding homes for assisted living services. The department
31 shall develop rules that ensure that such contracted services:

32 (1) Recognize individual needs, privacy, and autonomy;

33 (2) Include, but not be limited to, personal care, nursing
34 services, medication administration, and supportive services that
35 promote independence and self-sufficiency;

36 (3) Are of sufficient scope to assure that each resident who
37 chooses to remain in assisted living may do so, unless nursing care
38 needs exceed the level of care defined by the department;

1 (4) Are directed first to those persons most likely, in the absence
2 of assisted living services, to need hospital, nursing facility, or
3 other out-of-home placement due to severe functional disability; and

4 (5) Are provided in compliance with applicable department of health
5 facility and professional licensing laws and rules.

6 NEW SECTION. **Sec. 5.** ACCESS TO LONG-TERM CARE SERVICES. The
7 aging and adult services administration:

8 (1) Shall ensure the provision of information and assistance,
9 comprehensive assessment, and case management services that are timely
10 and respectful of individual expectations of service quality;

11 (2) Shall ensure that, in addition to financial eligibility as
12 determined under chapter 74.08 RCW, an individual's need for publicly
13 assisted long-term care is determined by comprehensive assessment of
14 functional disability and the availability of informal support from
15 family and friends. The comprehensive assessment shall document
16 medical condition, health history, psychosocial information, functional
17 abilities, and availability of family support. The comprehensive
18 assessment is used to determine the plan of care and appropriate care
19 setting;

20 (3) May provide a comprehensive assessment for private-pay
21 consumers who request such assistance; and

22 (4) Shall provide information to nursing home residents regarding
23 available and appropriate other services and may provide assistance
24 relocating any resident who chooses an alternative service.

25 NEW SECTION. **Sec. 6.** The department of social and health services
26 shall adopt rules pursuant to chapter 34.05 RCW necessary to carry out
27 the provisions of this chapter.

28 **Sec. 7.** RCW 74.42.010 and 1979 ex.s. c 211 s 1 are each amended to
29 read as follows:

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

32 (1) "Department" means the department of social and health services
33 and the department's employees.

34 (2) "Facility" refers to a nursing home as defined in RCW
35 18.51.010.

1 (3) "Licensed practical nurse" means a person licensed to practice
2 practical nursing under chapter 18.78 RCW.

3 (4) "Medicaid" means Title XIX of the Social Security Act enacted
4 by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79
5 Stat. 343), as amended.

6 (5) "Nursing care" means that care provided by a registered nurse,
7 a licensed practical nurse, or a nursing assistant in the regular
8 performance of their duties.

9 (6) "Qualified therapist" means:

10 (a) An activities specialist who has specialized education,
11 training, or experience specified by the department.

12 (b) An audiologist who is eligible for a certificate of clinical
13 competence in audiology or who has the equivalent education and
14 clinical experience.

15 (c) A mental health professional as defined in chapter 71.05 RCW.

16 (d) A mental retardation professional who is a qualified therapist
17 or a therapist approved by the department and has specialized training
18 or one year experience in treating or working with the mentally
19 retarded or developmentally disabled.

20 (e) An occupational therapist who is a graduate of a program in
21 occupational therapy or who has equivalent education or training.

22 (f) A physical therapist as defined in chapter 18.74 RCW.

23 (g) A social worker who is a graduate of a school of social work.

24 (h) A speech pathologist who is eligible for a certificate of
25 clinical competence in speech pathology or who has equivalent education
26 and clinical experience.

27 (7) "Registered nurse" means a person practicing nursing under
28 chapter 18.88 RCW.

29 (8) "Resident" means an individual (~~((recipient of medical benefits
30 pursuant to chapter 74.09 RCW, except as to RCW 74.42.030 through
31 74.42.130 which shall apply to all patients))~~) residing in a nursing
32 home, as defined in RCW 18.51.010.

33 (9) "Physician's assistant" means a person practicing pursuant to
34 chapters 18.57A and 18.71A RCW.

35 (10) "Nurse practitioner" means a person practicing such expanded
36 acts of nursing as are authorized by the board of nursing pursuant to
37 RCW 18.88.030.

1 **Sec. 8.** RCW 70.38.111 and 1992 c 27 s 2 are each amended to read
2 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
31 service area of the organization or the service areas of the
32 organizations in the combination, an enrollment of at least fifty
33 thousand individuals and, on the date the application is submitted
34 under subsection (2) of this section, at least fifteen years remain in
35 the term of the lease, (ii) the facility is or will be geographically
36 located so that the service will be reasonably accessible to such
37 enrolled individuals, and (iii) at least seventy-five percent of the
38 patients who can reasonably be expected to receive the tertiary health
39 service will be individuals enrolled with such organization;

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

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

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

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

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

29 (3) A health care facility (or any part thereof) with respect to
30 which an exemption was granted under subsection (1) of this section may
31 not be sold or leased and a controlling interest in such facility or in
32 a lease of such facility may not be acquired and a health care facility
33 described in (1)(c) which was granted an exemption under subsection (1)
34 of this section may not be used by any person other than the lessee
35 described in (1)(c) unless:

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

38 (b) The department determines, upon application, that (i) the
39 entity to which the facility is proposed to be sold or leased, which

1 intends to acquire the controlling interest, or which intends to use
2 the facility is a health maintenance organization or a combination of
3 health maintenance organizations which meets the requirements of
4 (1)(a)(i), and (ii) with respect to such facility, meets the
5 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
6 and (ii).

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

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

19 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

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

19 (6) A rural hospital, as defined by the department, reducing the
20 number of licensed beds to become a rural primary care hospital under
21 the provisions of Part A Title XVIII of the Social Security Act Section
22 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
23 of beds licensed under chapter 70.41 RCW, increase the number of
24 licensed beds to no more than the previously licensed number without
25 being subject to the provisions of this chapter.

26 (7) A rural health care facility licensed under RCW 70.175.100
27 formerly licensed as a hospital under chapter 70.41 RCW may, within
28 three years of the effective date of the rural health care facility
29 license, apply to the department for a hospital license and not be
30 subject to the requirements of RCW 70.38.105(4)(a) as the construction,
31 development, or other establishment of a new hospital, provided there
32 is no increase in the number of beds previously licensed under chapter
33 70.41 RCW and there is no redistribution in the number of beds used for
34 acute care or long-term care, the rural health care facility has been
35 in continuous operation, and the rural health care facility has not
36 been purchased or leased.

37 (8)(a) A nursing home that voluntarily reduces the number of its
38 licensed beds to provide assisted living, licensed boarding home care,
39 adult day care, adult day health, respite care, hospice, outpatient

1 therapy services, congregate meals, home health, or senior wellness
2 clinic, or to reduce to one or two the number of beds per room in the
3 nursing home, may convert the original facility or portion of the
4 facility back, and thereby increase the number of nursing home beds to
5 no more than the previously licensed number of nursing home beds
6 without being subject to the provisions of this chapter except under
7 RCW 70.38.105(4)(d), provided the facility has been in continuous
8 operation and has not been purchased or leased.

9 (b) To convert beds back to nursing home beds under this
10 subsection, the nursing home must:

11 (i) Give notice of its intent to preserve conversion options to the
12 department of health no later than thirty days after the effective date
13 of the license reduction; and

14 (ii) Give notice to the department of health and to the department
15 of social and health services of the intent to convert beds back. If
16 construction is required for the conversion of beds back, the notice of
17 intent to convert beds back must be given no later than two years prior
18 to the effective date of license modification reflecting the restored
19 beds; otherwise, the notice must be given no later than one year prior
20 to the effective date of license modification reflecting the restored
21 beds.

22 (c) Conversion of beds back under this subsection must be completed
23 no later than four years after the effective date of the license
24 reduction. However, for good cause shown, the four-year period for
25 conversion may be extended by the department of health for one
26 additional four-year period.

27 (d) Nursing home beds that have been voluntarily reduced under this
28 section shall be counted as available nursing home beds for the purpose
29 of evaluating need under RCW 70.38.115(2)(a) and (k) so long as the
30 facility retains the ability to convert them back to nursing home use
31 under the terms of this section.

32 **Sec. 9.** RCW 70.38.115 and 1989 1st ex.s. c 9 s 605 and 1989 c 175
33 s 126 are each reenacted and amended to read as follows:

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

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

5 ~~((Until June 30, 1990, the relationship of the health services
6 being reviewed to the applicable health plans;~~

7 ~~(b))~~ The need that the population served or to be served by such
8 services has for such services;

9 ~~((e))~~ (b) The availability of less costly or more effective
10 alternative methods of providing such services;

11 ~~((d))~~ (c) The financial feasibility and the probable impact of
12 the proposal on the cost of and charges for providing health services
13 in the community to be served;

14 ~~((e))~~ (d) In the case of health services to be provided, (i) the
15 availability of alternative uses of project resources for the provision
16 of other health services, (ii) the extent to which such proposed
17 services will be accessible to all residents of the area to be served,
18 and (iii) the need for and the availability in the community of
19 services and facilities for osteopathic and allopathic physicians and
20 their patients. The department shall consider the application in terms
21 of its impact on existing and proposed institutional training programs
22 for doctors of osteopathy and medicine at the student, internship, and
23 residency training levels;

24 ~~((f))~~ (e) In the case of a construction project, the costs and
25 methods of the proposed construction, including the cost and methods of
26 energy provision, and the probable impact of the construction project
27 reviewed (i) on the cost of providing health services by the person
28 proposing such construction project and (ii) on the cost and charges to
29 the public of providing health services by other persons;

30 ~~((g))~~ (f) The special needs and circumstances of osteopathic
31 hospitals, nonallopathic services and children's hospitals;

32 ~~((h))~~ (g) Improvements or innovations in the financing and
33 delivery of health services which foster cost containment and serve to
34 promote quality assurance and cost-effectiveness;

35 ~~((i))~~ (h) In the case of health services proposed to be provided,
36 the efficiency and appropriateness of the use of existing services and
37 facilities similar to those proposed;

1 (~~(j)~~) (i) In the case of existing services or facilities, the
2 quality of care provided by such services or facilities in the past;
3 (~~and~~

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

7 (k) In the case of nursing home applications:

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

10 (ii) The availability of other services in the community to be
11 served. Data used to determine the availability of other services will
12 include but not be limited to data provided by the aging and adult
13 services administration of the department of social and health
14 services.

15 (3) A certificate of need application of a health maintenance
16 organization or a health care facility which is controlled, directly or
17 indirectly, by a health maintenance organization, shall be approved by
18 the department if the department finds:

19 (a) Approval of such application is required to meet the needs of
20 the members of the health maintenance organization and of the new
21 members which such organization can reasonably be expected to enroll;
22 and

23 (b) The health maintenance organization is unable to provide,
24 through services or facilities which can reasonably be expected to be
25 available to the organization, its health services in a reasonable and
26 cost-effective manner which is consistent with the basic method of
27 operation of the organization and which makes such services available
28 on a long-term basis through physicians and other health professionals
29 associated with it.

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

35 (4) Until the final expiration of the state health plan as provided
36 under RCW 70.38.919, the decision of the department on a certificate of
37 need application shall be consistent with the state health plan in
38 effect, except in emergency circumstances which pose a threat to the
39 public health. The department in making its final decision may issue

1 a conditional certificate of need if it finds that the project is
2 justified only under specific circumstances. The conditions shall
3 directly relate to the project being reviewed. The conditions may be
4 released if it can be substantiated that the conditions are no longer
5 valid and the release of such conditions would be consistent with the
6 purposes of this chapter.

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

11 (6) The department shall specify information to be required for
12 certificate of need applications. Within fifteen days of receipt of
13 the application, the department shall request additional information
14 considered necessary to the application or start the review process.
15 Applicants may decline to submit requested information through written
16 notice to the department, in which case review starts on the date of
17 receipt of the notice. Applications may be denied or limited because
18 of failure to submit required and necessary information.

19 (7) Concurrent review is for the purpose of comparative analysis
20 and evaluation of competing or similar projects in order to determine
21 which of the projects may best meet identified needs. Categories of
22 projects subject to concurrent review include at least new health care
23 facilities, new services, and expansion of existing health care
24 facilities. The department shall specify time periods for the
25 submission of applications for certificates of need subject to
26 concurrent review, which shall not exceed ninety days. Review of
27 concurrent applications shall start fifteen days after the conclusion
28 of the time period for submission of applications subject to concurrent
29 review. Concurrent review periods shall be limited to one hundred
30 fifty days, except as provided for in rules adopted by the department
31 authorizing and limiting amendment during the course of the review, or
32 for an unresolved pivotal issue declared by the department.

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

1 (9) The department or its designee, shall conduct a public hearing
2 on a certificate of need application if requested unless the review is
3 expedited or subject to emergency review. The department by rule shall
4 specify the period of time within which a public hearing must be
5 requested and requirements related to public notice of the hearing,
6 procedures, recordkeeping and related matters.

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

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

13 (a) A new service requiring review under this chapter;

14 (b) An expansion of a service subject to review beyond that
15 originally approved;

16 (c) An increase in bed capacity;

17 (d) A significant reduction in the scope of a nursing home project
18 without a commensurate reduction in the cost of the nursing home
19 project, or a cost increase (as represented in bids on a nursing home
20 construction project or final cost estimates acceptable to the person
21 to whom the certificate of need was issued) if the total of such
22 increases exceeds twelve percent or fifty thousand dollars, whichever
23 is greater, over the maximum capital expenditure approved. The review
24 of reductions or cost increases shall be restricted to the continued
25 conformance of the nursing home project with the review criteria
26 pertaining to financial feasibility and cost containment.

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

32 (13) In the case of an application for a certificate of need to
33 replace existing nursing home beds, all criteria must be met on the
34 same basis as an application for a certificate of need for a new
35 nursing home, except that the need criteria shall be deemed met if the
36 applicant is an existing licensee who proposes to replace existing beds
37 that the licensee has operated for at least one year with the same or
38 fewer number of beds in the same planning area. When an entire nursing
39 home ceases operation, its beds shall be treated as existing nursing

1 home beds for purposes of replacement for eight years or until a
2 certificate of need to replace them is issued, whichever occurs first.
3 However, the nursing home must give notice of its intent to retain the
4 beds to the department of health no later than thirty days after the
5 effective date of the facility's closure.

6 NEW SECTION. Sec. 10. Sections 1 through 6, 12, and 13 of this
7 act shall constitute a new chapter in Title 74 RCW.

8 NEW SECTION. Sec. 11. Section captions as used in this act
9 constitute no part of the law.

10 NEW SECTION. Sec. 12. If any part of this act is found to be in
11 conflict with federal requirements that are a prescribed condition to
12 the allocation of federal funds to the state, the conflicting part of
13 this act is inoperative solely to the extent of the conflict and with
14 respect to the agencies directly affected, and this finding does not
15 affect the operation of the remainder of this act in its application to
16 the agencies concerned. The rules under this act shall meet federal
17 requirements that are a necessary condition to the receipt of federal
18 funds by the state.

19 NEW SECTION. Sec. 13. If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. Sec. 14. (1) The community residential facility
24 advisory council is hereby established. The governor shall appoint the
25 members of the council, which shall be composed of:

26 (a) Two licensed adult family home owners each representing
27 different geographical areas of the state;

28 (b) Two licensed boarding home/assisted living facility owners each
29 representing different geographical areas of the state;

30 (c) Two boarding licensed home/congregate care facility providers,
31 each representing different geographical areas of the state;

32 (d) Two nursing home owners, one representing a proprietary home
33 and one representing a nonproprietary home;

1 (e) Two adult family home residents or a member of their immediate
2 family each representing any one of the following groups, the elderly,
3 residents with mental/brain disorders, the developmentally disabled,
4 and persons with HIV/AIDS;

5 (f) Two assisted living residents or a member of their immediate
6 family each representing any one of the following groups, the elderly,
7 residents with mental/brain disorders, the developmentally disabled,
8 and persons with HIV/AIDS;

9 (g) Four members representing state or regional functional
10 disability organizations whose members require community residential
11 care; and

12 (h) The state long-term care ombudsman or his or her designee.

13 (2) Members shall be appointed for terms of three years and with a
14 limit of two terms, except that any member appointed to fill a vacancy
15 occurring prior to the expiration of the term for which his or her
16 predecessor was appointed shall be appointed for the remainder of such
17 term and the member's terms shall expire as designated at the time of
18 appointment. The terms of appointment shall be the following: Two
19 members at the end of the first year, three members at the end of the
20 second year, three members at the end of the third year, and two at the
21 end of the fourth year after the date of appointment. Thereafter, all
22 appointments shall be for three years. The chair of the council shall
23 be appointed by the members of the council. It shall be the duty of
24 the chair to call a meeting of the council. The council shall meet not
25 more than six times each year. However, the council may meet more
26 frequently as the chair deems necessary and upon the formal written
27 request of not less than eight members. Each member of the council
28 shall receive travel expenses in accordance with RCW 43.03.060. The
29 council members shall be appointed within six months after the
30 effective date of this act.

31 (3) The community residential facility advisory council shall:

32 (a) Consult with and advise the legislature, department of health,
33 and the department of social and health services on all matters of
34 policy affecting administration of boarding homes licensed congregate
35 care facilities, assisted living facilities, adult family homes, and in
36 the development of all rules pertaining to these community residential
37 care options;

38 (b) Review and make recommendations with respect to rules and
39 standards pertaining to community residential facilities identified in

1 subsection (1) of this section, prior to their adoption and
2 promulgation by the appropriate departments; and

3 (c) Provide recommendations to the secretary of social and health
4 services, the secretary of health, and the legislature on: Ways in
5 which the use of residential facility services by both private and
6 public clients can be improved and maintained; ways in which health and
7 safety standards can be improved; coordination of referral and
8 discharge services with hospitals, state mental hospitals, and nursing
9 homes; improving the quality of life and the quality of resident care;
10 establishing appropriate and uniform training; and other issues that
11 the council finds appropriate and beneficial for the care and
12 assistance provided to residents of community residential facilities.

13 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and shall take
16 effect immediately.

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