

2 E2SHB 1330 - H AMD 026 ADOPTED 1-19-96

3 By Representatives Dyer and Cody

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5 Beginning on page 6, line 23, strike all of section 3 and insert
6 the following:

7 "Sec. 3. RCW 70.38.115 and 1995 1st sp.s. c 18 s 72 are each
8 amended to read as follows:

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

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

17 (a) The need that the population served or to be served by such
18 services has for such services;

19 (b) The availability of less costly or more effective alternative
20 methods of providing such services;

21 (c) The financial feasibility and the probable impact of the
22 proposal on the cost of and charges for providing health services in
23 the community to be served;

24 (d) In the case of health services to be provided, (i) the
25 availability of alternative uses of project resources for the provision
26 of other health services, (ii) the extent to which such proposed
27 services will be accessible to all residents of the area to be served,
28 and (iii) the need for and the availability in the community of
29 services and facilities for osteopathic and allopathic physicians and
30 their patients. The department shall consider the application in terms
31 of its impact on existing and proposed institutional training programs
32 for doctors of osteopathy and medicine at the student, internship, and
33 residency training levels;

34 (e) In the case of a construction project, the costs and methods of
35 the proposed construction, including the cost and methods of energy

1 provision, and the probable impact of the construction project reviewed
2 (i) on the cost of providing health services by the person proposing
3 such construction project and (ii) on the cost and charges to the
4 public of providing health services by other persons;

5 ~~(f) ((The special needs and circumstances of osteopathic hospitals,~~
6 ~~nonallopathic services and children's hospitals;~~

7 ~~(g))~~ Improvements or innovations in the financing and delivery of
8 health services which foster cost containment and serve to promote
9 quality assurance and cost-effectiveness;

10 ~~((h))~~ (g) In the case of health services proposed to be provided,
11 the efficiency and appropriateness of the use of existing services and
12 facilities similar to those proposed;

13 ~~((i))~~ (h) In the case of existing services or facilities, the
14 quality of care provided by such services or facilities in the past;
15 and

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

19 ~~(k))~~ (i) In the case of nursing home applications:

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

22 (ii) The availability of other services in the community to be
23 served. Data used to determine the availability of other services will
24 include but not be limited to data provided by the department of social
25 and health services.

26 (3) A certificate of need application of a health maintenance
27 organization or a health care facility which is controlled, directly or
28 indirectly, by a health maintenance organization, shall be approved by
29 the department if the department finds:

30 (a) Approval of such application is required to meet the needs of
31 the members of the health maintenance organization and of the new
32 members which such organization can reasonably be expected to enroll;
33 and

34 (b) The health maintenance organization is unable to provide,
35 through services or facilities which can reasonably be expected to be
36 available to the organization, its health services in a reasonable and
37 cost-effective manner which is consistent with the basic method of
38 operation of the organization and which makes such services available

1 on a long-term basis through physicians and other health professionals
2 associated with it.

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

8 ~~(4) ((Until the final expiration of the state health plan as
9 provided under RCW 70.38.919, the decision of the department on a
10 certificate of need application shall be consistent with the state
11 health plan in effect, except in emergency circumstances which pose a
12 threat to the public health.))~~ The department in making its final
13 decision may issue a conditional certificate of need if it finds that
14 the project is justified only under specific circumstances. The
15 conditions shall directly relate to the project being reviewed. The
16 conditions may be released if it can be substantiated that the
17 conditions are no longer valid and the release of such conditions would
18 be consistent with the purposes of this chapter.

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

23 (6) The department shall specify information to be required for
24 certificate of need applications. Within fifteen days of receipt of
25 the application, the department shall request additional information
26 considered necessary to the application or start the review process.
27 Applicants may decline to submit requested information through written
28 notice to the department, in which case review starts on the date of
29 receipt of the notice. Applications may be denied or limited because
30 of failure to submit required and necessary information.

31 (7) Concurrent review is for the purpose of comparative analysis
32 and evaluation of competing or similar projects in order to determine
33 which of the projects may best meet identified needs. Categories of
34 projects subject to concurrent review include at least new health care
35 facilities, new services, and expansion of existing health care
36 facilities. The department shall specify time periods for the
37 submission of applications for certificates of need subject to
38 concurrent review, which shall not exceed ninety days. Review of
39 concurrent applications shall start fifteen days after the conclusion

1 of the time period for submission of applications subject to concurrent
2 review. Concurrent review periods shall be limited to one hundred
3 fifty days, except as provided for in rules adopted by the department
4 authorizing and limiting amendment during the course of the review, or
5 for an unresolved pivotal issue declared by the department.

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

12 (9) The department or its designee, shall conduct a public hearing
13 on a certificate of need application if requested unless the review is
14 expedited or subject to emergency review. The department by rule shall
15 specify the period of time within which a public hearing must be
16 requested and requirements related to public notice of the hearing,
17 procedures, recordkeeping and related matters.

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

22 (b) Any health care facility or health maintenance organization
23 that: (i) Provides services similar to the services provided by the
24 applicant and under review pursuant to this subsection; (ii) is located
25 within the applicant's health service area; and (iii) testified or
26 submitted evidence at a public hearing held pursuant to subsection (9)
27 of this section, shall be provided an opportunity to present oral or
28 written testimony and argument in a proceeding under this subsection:
29 PROVIDED, That the health care facility or health maintenance
30 organization had, in writing, requested to be informed of the
31 department's decisions.

32 (c) If the department desires to settle with the applicant prior to
33 the conclusion of the adjudicative proceeding, the department shall so
34 inform the health care facility or health maintenance organization and
35 afford them an opportunity to comment, in advance, on the proposed
36 settlement.

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

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

1 ~~(b) An expansion of a service subject to review beyond that~~
2 ~~originally approved;~~

3 ~~(c) An increase in bed capacity;~~

4 ~~(d))~~) A significant reduction in the scope of a nursing home
5 project without a commensurate reduction in the cost of the nursing
6 home project, or a cost increase (as represented in bids on a nursing
7 home construction project or final cost estimates acceptable to the
8 person to whom the certificate of need was issued) if the total of such
9 increases exceeds twelve percent or fifty thousand dollars, whichever
10 is greater, over the maximum capital expenditure approved. The review
11 of reductions or cost increases shall be restricted to the continued
12 conformance of the nursing home project with the review criteria
13 pertaining to financial feasibility and cost containment.

14 (12) An application for a certificate of need for a nursing home
15 capital expenditure which is determined by the department to be
16 required to eliminate or prevent imminent safety hazards or correct
17 violations of applicable licensure and accreditation standards shall be
18 approved.

19 (13)(a) Replacement of existing nursing home beds in the same
20 planning area by an existing licensee who has operated the beds for at
21 least one year shall not require a certificate of need under this
22 chapter. The licensee shall give written notice of its intent to
23 replace the existing nursing home beds to the department and shall
24 provide the department with information as may be required pursuant to
25 rule. Replacement of the beds by a party other than the licensee is
26 subject to certificate of need review under this chapter, except as
27 otherwise permitted by subsection (14) of this section.

28 (b) When an entire nursing home ceases operation, the licensee or
29 any other party who has secured an interest in the beds may reserve his
30 or her interest in the beds for eight years or until a certificate of
31 need to replace them is issued, whichever occurs first. However, the
32 nursing home, licensee, or any other party who has secured an interest
33 in the beds must give notice of its intent to retain the beds to the
34 department of health no later than thirty days after the effective date
35 of the facility's closure. Certificate of need review shall be
36 required for any party who has reserved the nursing home beds except
37 that the need criteria shall be deemed met when the applicant is the
38 licensee who had operated the beds for at least one year, who has
39 operated the beds for at least one year immediately preceding the

1 reservation of the beds, and who is replacing the beds in the same
2 planning area.

3 (14) In the event that a licensee, who has provided the department
4 with notice of his or her intent to replace nursing home beds under
5 subsection (13)(a) of this section, engages in unprofessional conduct
6 or becomes unable to practice with reasonable skill and safety by
7 reason of mental or physical condition, pursuant to chapter 18.130 RCW,
8 or dies, the building owner shall be permitted to complete the nursing
9 home bed replacement project, provided the building owner has secured
10 an interest in the beds."

11 **E2SHB 1330** - H AMD

12 By Representative Dyer

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14 On page 12, line 2, strike "1995" and insert "1996"

15 On page 12, line 15, strike "1996" and insert "1997"

16 On page 12, line 18, strike "1996" and insert "1997"

17 On page 12, line 19, strike "1996" and insert "1997"

18 On page 12, line 34, strike "1996" and insert "1997"

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20 By Representative Dyer

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22 On page 14, line 18, strike "1996" and insert "1997"

1 **E2SHB 1330** - H AMD
2 By Representative Dyer

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4 Beginning on page 17, line 26, strike all of section 22

5 Renumber the remaining sections consecutively and correct internal
6 references and the title accordingly.

7 **E2SHB 1330** - H AMD
8 By Representative Dyer

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10 On page 18, beginning on line 13, after "through" strike all
11 material through "1995." on line 16, and insert "21 of this act shall
12 take effect July 1, 1996."

13 EFFECT: Updates a section amended in 1995, deletes an amendment
14 enacted in 1995, and updates the effective dates of sections by one
15 year.

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