
SUBSTITUTE HOUSE BILL 1024

State of Washington

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By House Committee on Health Care (originally sponsored by Representatives Dyer, Cody, Skinner, Sherstad, Thompson, Carlson, D. Sommers, Sterk, Huff, L. Thomas, Cooke, Dunn, Mielke, Clements and Backlund)

Read first time 02/05/97.

1 AN ACT Relating to the notice requirements for bringing beds out of
2 the bank under certificate of need provisions; and amending RCW
3 70.38.111 and 70.38.025.

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

5 **Sec. 1.** RCW 70.38.111 and 1995 1st sp.s. c 18 s 71 are each
6 amended to read as follows:

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

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

1 (b) A health care facility if (i) the facility primarily provides
2 or will provide inpatient health services, (ii) the facility is or will
3 be controlled, directly or indirectly, by a health maintenance
4 organization or a combination of health maintenance organizations which
5 has, in the service area of the organization or service areas of the
6 organizations in the combination, an enrollment of at least fifty
7 thousand individuals, (iii) the facility is or will be geographically
8 located so that the service will be reasonably accessible to such
9 enrolled individuals, and (iv) at least seventy-five percent of the
10 patients who can reasonably be expected to receive the tertiary health
11 service will be individuals enrolled with such organization or
12 organizations in the combination; or

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

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

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

36 (b) The application contains such information respecting the
37 organization, combination, or facility and the proposed offering or
38 obligation by a nursing home as the department may require to determine
39 if the organization or combination meets the requirements of subsection

1 (1) of this section or the facility meets or will meet such
2 requirements; and

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

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

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

23 (b) The department determines, upon application, that (i) the
24 entity to which the facility is proposed to be sold or leased, which
25 intends to acquire the controlling interest, or which intends to use
26 the facility is a health maintenance organization or a combination of
27 health maintenance organizations which meets the requirements of
28 (1)(a)(i), and (ii) with respect to such facility, meets the
29 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
30 and (ii).

31 (4) In the case of a health maintenance organization, an ambulatory
32 care facility, or a health care facility, which ambulatory or health
33 care facility is controlled, directly or indirectly, by a health
34 maintenance organization or a combination of health maintenance
35 organizations, the department may under the program apply its
36 certificate of need requirements only to the offering of inpatient
37 tertiary health services and then only to the extent that such offering
38 is not exempt under the provisions of this section.

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

5 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

36 (c) The sale, lease, acquisition, or use of part or all of a
37 continuing care retirement community nursing home that qualifies for
38 exemption under this subsection shall require prior certificate of need
39 approval to qualify for licensure as a nursing home unless the

1 department determines such sale, lease, acquisition, or use is by a
2 continuing care retirement community that meets the conditions of (a)
3 of this subsection.

4 (6) A rural hospital, as defined by the department, reducing the
5 number of licensed beds to become a rural primary care hospital under
6 the provisions of Part A Title XVIII of the Social Security Act Section
7 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
8 of beds licensed under chapter 70.41 RCW, increase the number of
9 licensed beds to no more than the previously licensed number without
10 being subject to the provisions of this chapter.

11 (7) A rural health care facility licensed under RCW 70.175.100
12 formerly licensed as a hospital under chapter 70.41 RCW may, within
13 three years of the effective date of the rural health care facility
14 license, apply to the department for a hospital license and not be
15 subject to the requirements of RCW 70.38.105(4)(a) as the construction,
16 development, or other establishment of a new hospital, provided there
17 is no increase in the number of beds previously licensed under chapter
18 70.41 RCW and there is no redistribution in the number of beds used for
19 acute care or long-term care, the rural health care facility has been
20 in continuous operation, and the rural health care facility has not
21 been purchased or leased.

22 (8)(a) A nursing home that voluntarily reduces the number of its
23 licensed beds to provide assisted living, licensed boarding home care,
24 adult day care, adult day health, respite care, hospice, outpatient
25 therapy services, congregate meals, home health, or senior wellness
26 clinic, or to reduce to one or two the number of beds per room or to
27 otherwise enhance the quality of life for residents in the nursing
28 home, may convert the original facility or portion of the facility
29 back, and thereby increase the number of nursing home beds to no more
30 than the previously licensed number of nursing home beds without
31 obtaining a certificate of need under this chapter, provided the
32 facility has been in continuous operation and has not been purchased or
33 leased. Any conversion to the original licensed bed capacity, or to
34 any portion thereof, shall comply with the same life and safety code
35 requirements as existed at the time the nursing home voluntarily
36 reduced its licensed beds; unless waivers from such requirements were
37 issued, in which case the converted beds shall reflect the conditions
38 or standards that then existed pursuant to the approved waivers.

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

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

6 (ii) Give notice to the department of health and to the department
7 of social and health services of the intent to convert beds back. If
8 construction is required for the conversion of beds back, the notice of
9 intent to convert beds back must be given (~~((no later than two years))~~),
10 at a minimum, one year prior to the effective date of license
11 modification reflecting the restored beds; otherwise, the notice must
12 be given (~~((no later than one year))~~) a minimum of ninety days prior to
13 the effective date of license modification reflecting the restored
14 beds. Prior to any license modification to convert beds back to
15 nursing home beds under this section, the licensee must demonstrate
16 that the nursing home meets the certificate of need exemption
17 requirements of this section.

18 The term "construction," as used in (b)(ii) of this subsection, is
19 limited to those projects that are expected to equal or exceed the
20 expenditure minimum amount, as determined under this chapter.

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

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

31 (e) When a building owner has secured an interest in the nursing
32 home beds, which are intended to be voluntarily reduced by the licensee
33 under (a) of this subsection, the applicant shall provide the
34 department with a written statement indicating the building owner's
35 approval of the bed reduction.

36 **Sec. 2.** RCW 70.38.025 and 1991 c 158 s 1 are each amended to read
37 as follows:

1 When used in this chapter, the terms defined in this section shall
2 have the meanings indicated.

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

5 (2) "Capital expenditure" is an expenditure, including a force
6 account expenditure (i.e., an expenditure for a construction project
7 undertaken by a nursing home facility as its own contractor) which,
8 under generally accepted accounting principles, is not properly
9 chargeable as an expense of operation or maintenance. Where a person
10 makes an acquisition under lease or comparable arrangement, or through
11 donation, which would have required review if the acquisition had been
12 made by purchase, such expenditure shall be deemed a capital
13 expenditure. Capital expenditures include donations of equipment or
14 facilities to a nursing home facility which if acquired directly by
15 such facility would be subject to certificate of need review under the
16 provisions of this chapter and transfer of equipment or facilities for
17 less than fair market value if a transfer of the equipment or
18 facilities at fair market value would be subject to such review. The
19 cost of any studies, surveys, designs, plans, working drawings,
20 specifications, and other activities essential to the acquisition,
21 improvement, expansion, or replacement of any plant or equipment with
22 respect to which such expenditure is made shall be included in
23 determining the amount of the expenditure.

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

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

37 (5) "Expenditure minimum" means, for the purposes of the
38 certificate of need program, one million dollars adjusted by the
39 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, and home health agencies, and includes such
6 facilities when owned and operated by a political subdivision or
7 instrumentality of the state and such other facilities as required by
8 federal law and implementing regulations, but does not include
9 (~~Christian Science sanatoriums operated, listed, or certified by the~~
10 ~~First Church of Christ Scientist, Boston, Massachusetts~~) any health
11 facility or institution conducted by and for those who rely exclusively
12 upon treatment by prayer or spiritual means in accordance with the
13 creed or tenets of any well-recognized church or religious
14 denomination, or any health facility or institution operated for the
15 exclusive care of members of a convent as defined in RCW 84.36.800 or
16 rectory, monastery, or other institution operated for the care of
17 members of the clergy. In addition, the term does not include any
18 nonprofit hospital: (a) Which is operated exclusively to provide
19 health care services for children; (b) which does not charge fees for
20 such services; and (c) if not contrary to federal law as necessary to
21 the receipt of federal funds by the state.

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

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

26 (b)(i) Provides or otherwise makes available to enrolled
27 participants health care services, including at least the following
28 basic health care services: Usual physician services, hospitalization,
29 laboratory, x-ray, emergency, and preventive services, and out-of-area
30 coverage; (ii) is compensated (except for copayments) for the provision
31 of the basic health care services listed in (b)(i) to enrolled
32 participants by a payment which is paid on a periodic basis without
33 regard to the date the health care services are provided and which is
34 fixed without regard to the frequency, extent, or kind of health
35 service actually provided; and (iii) provides physicians' services
36 primarily (A) directly through physicians who are either employees or
37 partners of such organization, or (B) through arrangements with
38 individual physicians or one or more groups of physicians (organized on
39 a group practice or individual practice basis).

1 (8) "Health services" means clinically related (i.e., preventive,
2 diagnostic, curative, rehabilitative, or palliative) services and
3 includes alcoholism, drug abuse, and mental health services and as
4 defined in federal law.

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

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

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

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

22 (13) "Secretary" means the secretary of health or the secretary's
23 designee.

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

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

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