
HOUSE BILL 1952

State of Washington 55th Legislature 1997 Regular Session

By Representatives Dyer, Morris, Backlund, Grant and Sherstad

Read first time 02/14/97. Referred to Committee on Health Care.

1 AN ACT Relating to health facilities and services; amending RCW
2 70.38.025, 70.38.105, 70.38.115, 70.38.135, and 43.70.052; adding a new
3 chapter to Title 70 RCW; creating new sections; decodifying RCW
4 70.38.155, 70.38.156, 70.38.157, 70.38.914, 70.38.915, 70.38.916,
5 70.38.917, 70.38.918, and 70.38.919; repealing RCW 70.38.095 and
6 70.170.080; prescribing penalties; providing an effective date; and
7 declaring an emergency.

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

9 **Sec. 1.** RCW 70.38.025 and 1991 c 158 s 1 are each amended to read
10 as follows:

11 When used in this chapter, the terms defined in this section shall
12 have the meanings indicated.

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

15 (2) "Capital expenditure" is an expenditure, including a force
16 account expenditure (i.e., an expenditure for a construction project
17 undertaken by a nursing home facility as its own contractor) which,
18 under generally accepted accounting principles, is not properly
19 chargeable as an expense of operation or maintenance. Where a person

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

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

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

28 (5) "Expenditure minimum" means, for the purposes of the
29 certificate of need program, one million dollars adjusted by the
30 department by rule to reflect changes in the United States department
31 of commerce composite construction cost index; or a lesser amount
32 required by federal law and established by the department by rule.

33 (6) "Health care facility" means hospices, (~~(hospitals, psychiatric~~
34 ~~hospitals,)~~) nursing homes, kidney disease treatment centers,
35 (~~(ambulatory surgical facilities,)~~) and home health agencies, and
36 includes such facilities when owned and operated by a political
37 subdivision or instrumentality of the state and such other facilities
38 as required by federal law and implementing regulations, but does not
39 include Christian Science sanatoriums operated, listed, or certified by

1 the First Church of Christ Scientist, Boston, Massachusetts. In
2 addition, the term does not include any nonprofit hospital: (a) Which
3 is operated exclusively to provide health care services for children;
4 (b) which does not charge fees for such services; and (c) if not
5 contrary to federal law as necessary to the receipt of federal funds by
6 the state.

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

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

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

25 (8) "Health services" means clinically related (i.e., preventive,
26 diagnostic, curative, rehabilitative, or palliative) services and
27 includes alcoholism, drug abuse, and mental health services and as
28 defined in federal law.

29 (9) "Health service area" means a geographic region appropriate for
30 effective health planning which includes a broad range of health
31 services.

32 (10) "Person" means an individual, a trust or estate, a
33 partnership, a corporation (including associations, joint stock
34 companies, and insurance companies), the state, or a political
35 subdivision or instrumentality of the state, including a municipal
36 corporation or a hospital district.

37 (11) "Provider" (~~generally~~) means a health care professional or
38 an organization, institution, or other entity providing health care

1 (~~but the precise definition for this term shall be established by rule~~
2 ~~of the department, consistent with federal law~~)).

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

8 (13) "Secretary" means the secretary of health or the secretary's
9 designee.

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

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

17 **Sec. 2.** RCW 70.38.105 and 1996 c 50 s 1 are each amended to read
18 as follows:

19 (1) The department is authorized and directed to implement the
20 certificate of need program in this state pursuant to the provisions of
21 this chapter.

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

25 (3) No person shall engage in any undertaking which is subject to
26 certificate of need review under subsection (4) of this section without
27 first having received from the department either a certificate of need
28 or an exception granted in accordance with this chapter.

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

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

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

35 ~~(c))~~ Any capital expenditure for the construction, renovation, or
36 alteration of a nursing home which substantially changes the services
37 of the facility (~~after January 1, 1981,~~) provided that the

1 substantial changes in services are specified by the department in
2 rule;

3 ~~((d))~~ (c) Any capital expenditure for the construction,
4 renovation, or alteration of a nursing home which exceeds the
5 expenditure minimum as defined by RCW 70.38.025. However, a capital
6 expenditure which is not subject to certificate of need review under
7 (a), (b), ~~((e),)~~ or ~~((e))~~ (d) of this subsection and which is
8 solely for any one or more of the following is not subject to
9 certificate of need review:

10 (i) Communications and parking facilities;

11 (ii) Mechanical, electrical, ventilation, heating, and air
12 conditioning systems;

13 (iii) Energy conservation systems;

14 (iv) Repairs to, or the correction of, deficiencies in existing
15 physical plant facilities which are necessary to maintain state
16 licensure, however, other additional repairs, remodeling, or
17 replacement projects that are not related to one or more deficiency
18 citations and are not necessary to maintain state licensure are not
19 exempt from certificate of need review except as otherwise permitted by
20 ~~((d))~~ (c)(vi) of this subsection or RCW 70.38.115(13);

21 (v) Acquisition of equipment, including data processing equipment,
22 which is not or will not be used in the direct provision of health
23 services;

24 (vi) Construction or renovation at an existing nursing home which
25 involves physical plant facilities, including administrative, dining
26 areas, kitchen, laundry, therapy areas, and support facilities, by an
27 existing licensee who has operated the beds for at least one year;

28 (vii) Acquisition of land; and

29 (viii) Refinancing of existing debt;

30 ~~((e))~~ (d) A change in bed capacity of a health care facility
31 which increases the total number of licensed beds or redistributes beds
32 among acute care, nursing home care, and boarding home care if the bed
33 redistribution is to be effective for a period in excess of six months,
34 or a change in bed capacity of a rural health care facility licensed
35 under RCW 70.175.100 that increases the total number of nursing home
36 beds or redistributes beds from acute care or boarding home care to
37 nursing home care if the bed redistribution is to be effective for a
38 period in excess of six months;

1 (~~(f)~~) (e) Any new tertiary health services which are offered in
2 or through a health care facility, hospital licensed under RCW
3 70.41.020(2) or chapter 71.12 RCW, or rural health care facility
4 licensed under RCW 70.175.100(~~(, and which were not offered on a~~
5 ~~regular basis by, in, or through such health care facility or rural~~
6 ~~health care facility within the twelve month period prior to the time~~
7 ~~such services would be offered;~~

8 (~~g~~) Any expenditure for the construction, renovation, or alteration
9 of a nursing home or change in nursing home services in excess of the
10 expenditure minimum made in preparation for any undertaking under
11 subsection (4) of this section and any arrangement or commitment made
12 for financing such undertaking. Expenditures of preparation shall
13 include expenditures for architectural designs, plans, working
14 drawings, and specifications. The department may issue certificates of
15 need permitting predevelopment expenditures, only, without authorizing
16 any subsequent undertaking with respect to which such predevelopment
17 expenditures are made)); and

18 (~~(h)~~) (f) Any increase in the number of dialysis stations in a
19 kidney disease center.

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

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

27 **Sec. 3.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read
28 as follows:

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

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

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

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

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

6 (d) In the case of health services to be provided, (i) the
7 availability of alternative uses of project resources for the provision
8 of other health services, (ii) the extent to which such proposed
9 services will be accessible to all residents of the area to be served,
10 and (iii) the need for and the availability in the community of
11 services and facilities for osteopathic physicians and surgeons and
12 allopathic physicians and their patients. The department shall
13 consider the application in terms of its impact on existing and
14 proposed institutional training programs for doctors of osteopathic
15 medicine and surgery and medicine at the student, internship, and
16 residency training levels;

17 (e) In the case of a construction project, the costs and methods of
18 the proposed construction, including the cost and methods of energy
19 provision, and the probable impact of the construction project reviewed
20 (i) on the cost of providing health services by the person proposing
21 such construction project and (ii) on the cost and charges to the
22 public of providing health services by other persons;

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

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

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

31 ~~((i))) (h) In the case of existing services or facilities, the~~
32 ~~quality of care provided by such services or facilities in the past;~~

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

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

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

1 (ii) The availability of other services in the community to be
2 served. Data used to determine the availability of other services will
3 include but not be limited to data provided by the department of social
4 and health services.

5 (3) A certificate of need application of a health maintenance
6 organization or a health care facility which is controlled, directly or
7 indirectly, by a health maintenance organization, shall be approved by
8 the department if the department finds:

9 (a) Approval of such application is required to meet the needs of
10 the members of the health maintenance organization and of the new
11 members which such organization can reasonably be expected to enroll;
12 and

13 (b) The health maintenance organization is unable to provide,
14 through services or facilities which can reasonably be expected to be
15 available to the organization, its health services in a reasonable and
16 cost-effective manner which is consistent with the basic method of
17 operation of the organization and which makes such services available
18 on a long-term basis through physicians and other health professionals
19 associated with it.

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

25 (4) ~~((Until the final expiration of the state health plan as
26 provided under RCW 70.38.919, the decision of the department on a
27 certificate of need application shall be consistent with the state
28 health plan in effect, except in emergency circumstances which pose a
29 threat to the public health.))~~ The department in making its final
30 decision may issue a conditional certificate of need if it finds that
31 the project is justified only under specific circumstances. The
32 conditions shall directly relate to the project being reviewed. The
33 conditions may be released if it can be substantiated that the
34 conditions are no longer valid and the release of such conditions would
35 be consistent with the purposes of this chapter.

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

1 (6) The department shall specify information to be required for
2 certificate of need applications. Within fifteen days of receipt of
3 the application, the department shall request additional information
4 considered necessary to the application or start the review process.
5 Applicants may decline to submit requested information through written
6 notice to the department, in which case review starts on the date of
7 receipt of the notice. Applications may be denied or limited because
8 of failure to submit required and necessary information.

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

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

29 (9) The department or its designee, shall conduct a public hearing
30 on a certificate of need application if requested unless the review is
31 expedited or subject to emergency review. The department by rule shall
32 specify the period of time within which a public hearing must be
33 requested and requirements related to public notice of the hearing,
34 procedures, recordkeeping and related matters.

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

1 (b) Any health care facility or health maintenance organization
2 that: (i) Provides services similar to the services provided by the
3 applicant and under review pursuant to this subsection; (ii) is located
4 within the applicant's health service area; and (iii) testified or
5 submitted evidence at a public hearing held pursuant to subsection (9)
6 of this section, shall be provided an opportunity to present oral or
7 written testimony and argument in a proceeding under this subsection:
8 PROVIDED, That the health care facility or health maintenance
9 organization had, in writing, requested to be informed of the
10 department's decisions.

11 (c) If the department desires to settle with the applicant prior to
12 the conclusion of the adjudicative proceeding, the department shall so
13 inform the health care facility or health maintenance organization and
14 afford them an opportunity to comment, in advance, on the proposed
15 settlement.

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

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

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

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

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

32 (12) An application for a certificate of need for a nursing home
33 capital expenditure which is determined by the department to be
34 required to eliminate or prevent imminent safety hazards or correct
35 violations of applicable licensure and accreditation standards shall be
36 approved.

37 (13)(a) Replacement of existing nursing home beds in the same
38 planning area by an existing licensee who has operated the beds for at
39 least one year shall not require a certificate of need under this

1 chapter. The licensee shall give written notice of its intent to
2 replace the existing nursing home beds to the department and shall
3 provide the department with information as may be required pursuant to
4 rule. Replacement of the beds by a party other than the licensee is
5 subject to certificate of need review under this chapter, except as
6 otherwise permitted by subsection (14) of this section.

7 (b) When an entire nursing home ceases operation, the licensee or
8 any other party who has secured an interest in the beds may reserve his
9 or her interest in the beds for eight years or until a certificate of
10 need to replace them is issued, whichever occurs first. However, the
11 nursing home, licensee, or any other party who has secured an interest
12 in the beds must give notice of its intent to retain the beds to the
13 department of health no later than thirty days after the effective date
14 of the facility's closure. Certificate of need review shall be
15 required for any party who has reserved the nursing home beds except
16 that the need criteria shall be deemed met when the applicant is the
17 licensee who had operated the beds for at least one year, who has
18 operated the beds for at least one year immediately preceding the
19 reservation of the beds, and who is replacing the beds in the same
20 planning area.

21 (14) In the event that a licensee, who has provided the department
22 with notice of his or her intent to replace nursing home beds under
23 subsection (13)(a) of this section, engages in unprofessional conduct
24 or becomes unable to practice with reasonable skill and safety by
25 reason of mental or physical condition, pursuant to chapter 18.130 RCW,
26 or dies, the building owner shall be permitted to complete the nursing
27 home bed replacement project, provided the building owner has secured
28 an interest in the beds.

29 **Sec. 4.** RCW 70.38.135 and 1989 1st ex.s. c 9 s 607 are each
30 amended to read as follows:

31 The secretary shall have authority to:

32 (1) ~~((Provide when needed))~~ Contract for temporary or intermittent
33 services of experts or consultants or organizations ~~((thereof, by~~
34 ~~contract, when such services are to be performed on a part time or fee-~~
35 ~~for service basis))~~;

36 (2) Make or cause to be made such on-site surveys of health care or
37 medical facilities as may be necessary for the administration of the
38 certificate of need program;

1 ~~((Upon review of recommendations, if any, from the board of~~
2 ~~health:~~

3 ~~((a))) Promulgate rules under which health care ((facilities))
4 providers doing business within the state shall submit to the
5 department such data ((related to health and health care)) as the
6 department finds necessary to the performance of its functions under
7 this chapter;~~

8 ~~((b)))~~ (4) Promulgate rules pertaining to the maintenance and
9 operation of medical facilities which receive federal assistance under
10 the provisions of Title XVI;

11 ~~((c)))~~ (5) Promulgate rules in implementation of the provisions of
12 this chapter, including the establishment of procedures for public
13 hearings for predecisions and post-decisions on applications for
14 certificate of need; and

15 ~~((d)))~~ (6) Promulgate rules providing circumstances and procedures
16 of expedited certificate of need review if there has not been a
17 significant change in existing health facilities of the same type or in
18 the need for such health facilities and services(~~(+~~

19 ~~(4) Grant allocated state funds to qualified entities, as defined~~
20 ~~by the department, to fund not more than seventy five percent of the~~
21 ~~costs of regional planning activities, excluding costs related to~~
22 ~~review of applications for certificates of need, provided for in this~~
23 ~~chapter or approved by the department; and~~

24 ~~(5) Contract with and provide reasonable reimbursement for~~
25 ~~qualified entities to assist in determinations of certificates of~~
26 ~~need)).~~

27 NEW SECTION. Sec. 5. (1) The enactment of this act shall not have
28 the effect of terminating, or in any way modifying, the validity of any
29 certificate of need that shall already have been issued before July 1,
30 1997.

31 (2) Any certificate of need application that was submitted and
32 declared complete, but upon which final action had not been taken
33 before July 1, 1997, shall be reviewed and action taken based on
34 chapter 70.38 RCW as in effect before July 1, 1997.

35 NEW SECTION. Sec. 6. The legislature finds that ambulatory
36 surgical centers have provided the citizens of Washington state access
37 to various routine surgical and similar invasive medical procedures not

1 requiring hospitalization, resulting in reduced health care costs
2 consistent with the intent of health care reform. However, the
3 delivery of these services may put patients at risk due to the invasive
4 nature of the procedures performed or the use of general anesthesia and
5 the short patient recovery time prior to discharge.

6 It is the intent of the legislature to protect the citizens of
7 Washington state by licensing ambulatory surgical centers and by
8 adopting and enforcing minimum standards for ambulatory surgical
9 centers. Standards established are intended to be the minimum
10 necessary to ensure a safe environment for the performance of surgical
11 procedures and to ensure safe and competent care of patients.

12 NEW SECTION. **Sec. 7.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Ambulatory surgical center" means any freestanding distinct
15 entity that operates primarily for the purpose of performing surgical
16 procedures to treat patients not requiring in-patient hospital care
17 under normal circumstances, except:

18 (a) A health care facility otherwise licensed and regulated by the
19 department to provide surgical services, including an ambulatory
20 surgical facility operated by a hospital and regulated by the
21 department according to chapter 70.41 RCW;

22 (b) A facility in the offices of either an individual or group
23 practice of physicians licensed under chapter 18.71 RCW, osteopathic
24 physicians or surgeons licensed under chapter 18.57 RCW, or podiatric
25 physicians or surgeons licensed under chapter 18.22 RCW, including
26 where the facility is physically separate from such a practice, if the
27 privilege of using such a facility is not extended to such licensed
28 practitioners outside the individual or group practice. However, such
29 a facility may request licensure as an ambulatory surgical center if
30 the facility meets the requirements of this chapter and rules adopted
31 under this chapter; and

32 (c) A facility in which the services are provided solely by
33 dentists licensed under chapter 18.32 RCW and persons assisting or
34 under the supervision of dentists. However, such a facility may
35 request licensure as an ambulatory surgical center if the facility
36 meets the requirements of this chapter and rules adopted under this
37 chapter.

38 (2) "Department" means the department of health.

1 (3) "Person" means an individual, firm, partnership, corporation,
2 company, association, joint stock association, and the legal successor
3 thereof.

4 (4) "Surgical procedure" means an invasive medical procedure that:

5 (a) Utilizes surgical instruments, laser, cautery, cryogenics, or
6 chemicals; and

7 (b) Removes, corrects, or facilitates the diagnosis or cure of a
8 disease, condition, or injury through that branch of medicine that
9 treats diseases, injuries, and deformities by manual or operative
10 methods.

11 NEW SECTION. **Sec. 8.** (1) Nothing in this chapter shall be
12 construed in any manner to change or expand the scope of practice of a
13 health care practitioner.

14 (2) Nothing in this chapter shall be construed to limit an
15 ambulatory surgical center to performing only surgical procedures.

16 NEW SECTION. **Sec. 9.** After June 30, 1998, no person shall operate
17 or maintain an ambulatory surgical center or advertise by using the
18 term "licensed ambulatory surgery center," "licensed day surgery
19 center," "licensed surgical center," "licensed surgery center," or
20 other words conveying similar meaning without first obtaining an
21 ambulatory surgical center license from the department.

22 NEW SECTION. **Sec. 10.** An applicant for an ambulatory surgical
23 center license shall:

24 (1) Submit to the department a written application on a form
25 provided by the department, including a list of surgical specialties
26 offered;

27 (2) Submit to the department for review and approval building plans
28 for new construction, alterations other than minor alterations, and
29 additions to existing facilities prior to licensure and occupancy as
30 prescribed by the department;

31 (3) Demonstrate ability to comply with this chapter and rules
32 adopted under this chapter;

33 (4) Cooperate with the department during on-site surveys prior to
34 licensure or renewal of licensure;

35 (5) Provide such proof as the department may require concerning
36 organizational and governance structure, and the identity of the

1 applicant, officers, directors, partners, managing employees, or owners
2 of ten percent or more of the applicant's assets;

3 (6) Pay to the department a license fee and building plan review
4 fee as prescribed by the department under the authority of RCW
5 43.70.110 and 43.70.250; and

6 (7) Provide any other information the department may reasonably
7 require.

8 NEW SECTION. **Sec. 11.** If the department determines that an
9 applicant complies with the provisions of this chapter and rules
10 adopted under this chapter, the department shall issue a license to the
11 applicant. A license, unless suspended or revoked, is effective for a
12 period of two years, however an initial license is only effective for
13 twelve months. The department shall conduct at least one on-site
14 survey within each licensure period, except as provided for in section
15 15 of this act.

16 NEW SECTION. **Sec. 12.** The department shall establish and adopt
17 such minimum standards and rules pertaining to the construction,
18 maintenance, and operation of ambulatory surgical centers as are
19 necessary for the safe and adequate care and treatment of patients:
20 PROVIDED, That such minimum standards are no greater than federal
21 medicare program standards as they existed on January 1, 1995, unless
22 authorized by other state statute.

23 NEW SECTION. **Sec. 13.** The department may, at any time, conduct an
24 on-site survey of a licensee in order to determine compliance with this
25 chapter and rules adopted under this chapter.

26 NEW SECTION. **Sec. 14.** The department may deny, suspend, or revoke
27 a license under this chapter or, in lieu thereof or in addition
28 thereto, assess civil monetary penalties in any case in which it finds
29 the applicant or licensee:

30 (1) Failed or refused to comply with the requirements of this
31 chapter or rules adopted under this chapter;

32 (2) Was the holder of a license issued according to this chapter
33 that was revoked for cause and never reissued by the department, or
34 that was suspended for cause and the terms of the suspension were not
35 fulfilled, and the licensee has continued to operate;

1 (3) Has knowingly or with reason to know made a false statement of
2 material fact in the application for the license or any data attached
3 thereto or in any record required by this chapter or matter under
4 investigation by the department;

5 (4) Refused to allow representatives of the department to inspect
6 any portion of the licensee's premises, or any book, record, or file
7 required by this chapter to be maintained;

8 (5) Willfully prevented, interfered with, or attempted to impede in
9 any way the work of any representative of the department and the lawful
10 enforcement of any provision of this chapter;

11 (6) Willfully prevented, interfered with, or attempted to impede in
12 any way any representative of the department in the preservation of
13 evidence of any violation of this chapter or rules adopted under this
14 chapter;

15 (7) Failed to pay any civil monetary penalty assessed by the
16 department according to this chapter within ten days after the
17 assessment becomes final;

18 (8) Used advertising that is false, fraudulent, or misleading;

19 (9) Has repeated incidents of personnel performing services beyond
20 their scope of practice; or

21 (10) Misrepresented or was fraudulent in any aspect of the conduct
22 of the licensee's business.

23 NEW SECTION. **Sec. 15.** (1) An ambulatory surgical center that is
24 certified or accredited as an ambulatory surgical center by the federal
25 medicare program or any private accrediting organization shall be
26 granted the applicable renewal license without the necessity of an on-
27 site state licensure survey if:

28 (a) The department determines that the applicable survey standards
29 of the certification or accreditation program are substantially
30 equivalent to those required by this chapter;

31 (b) An on-site survey has been conducted for the purposes of
32 certification or accreditation during the previous twenty-four months;
33 and

34 (c) The department receives directly from the certifying or
35 accrediting entity or from the licensee or applicant copies of the
36 initial and subsequent survey reports and other relevant reports or
37 findings that indicate compliance with licensure requirements.

1 (2) In reviewing whether the federal medicare program or any
2 private accrediting organization has survey standards that are of
3 substantial equivalency to those set forth in this chapter, the
4 department is directed to provide the most liberal interpretation
5 consistent with the intent of this chapter. In the event the
6 department determines at any time that the survey standards are not
7 substantially equivalent to those required by this chapter, the
8 department is directed to notify the affected licensees. The
9 notification shall contain a detailed description of the deficiencies
10 in the alternative survey process, as well as an explanation concerning
11 the risk to the consumer. The determination of substantial equivalency
12 for an alternative survey process and lack of substantial equivalency
13 are agency actions and subject to the provisions of chapter 34.05 RCW.

14 (3) Ambulatory surgical centers receiving a license without an on-
15 site survey by the department under this chapter shall pay the same
16 licensure fee as other ambulatory surgical centers.

17 (4) This section does not affect the department's enforcement
18 authority for licensed ambulatory surgical centers.

19 NEW SECTION. **Sec. 16.** An ambulatory surgical center licensed by
20 the department shall comply with the charity care delivery requirements
21 found in RCW 70.170.060 (1), (5), and (6) for the care it provides in
22 its center.

23 **Sec. 17.** RCW 43.70.052 and 1995 c 267 s 1 are each amended to read
24 as follows:

25 (1) To promote the public interest consistent with the purposes of
26 chapter 492, Laws of 1993 as amended by chapter 267, Laws of 1995, the
27 department shall continue to require hospitals to submit hospital
28 financial and patient discharge information, including the
29 comprehensive hospital abstract and reporting system commonly known as
30 CHARS, which shall be collected, maintained, analyzed, and disseminated
31 by the department or a private entity designated by the department.
32 The department shall also require ambulatory surgical facilities to
33 submit financial and patient discharge information, including
34 information comparable to CHARS data, which shall be collected,
35 maintained, analyzed, and disseminated by the department or a private
36 entity designated by the department. The department shall, if deemed
37 cost-effective and efficient, contract with a private entity for any or

1 all parts of data collection, analysis, dissemination, and retrieval.
2 Data elements shall be reported in conformance with a uniform reporting
3 system established by the department. This includes data elements
4 identifying each hospital's and each ambulatory surgical facility's
5 revenues, expenses, contractual allowances, charity care, bad debt,
6 other income, total units of inpatient and outpatient services, if
7 applicable, and other financial information reasonably necessary to
8 fulfill the purposes of this section. Data elements relating to use of
9 hospital services by patients shall be the same as those currently
10 compiled by hospitals through inpatient discharge abstracts. The
11 department shall encourage and permit reporting by electronic
12 transmission or hard copy as is practical and economical to reporters.

13 (2) In identifying financial reporting requirements, the department
14 may require both annual reports and condensed quarterly reports from
15 hospitals and ambulatory surgical facilities, so as to achieve both
16 accuracy and timeliness in reporting, but shall craft such requirements
17 with due regard of the data reporting burdens of hospitals and
18 ambulatory surgical facilities.

19 (3) The health care data collected, maintained, and studied by the
20 department or a private entity designated by the department shall only
21 be available for retrieval in original or processed form to public and
22 private requestors and shall be available within a reasonable period of
23 time after the date of request. The cost of retrieving data for state
24 officials and agencies shall be funded through the state general
25 appropriation. ~~((The cost of retrieving data for individuals and
26 organizations engaged in research or private use of data or studies
27 shall be funded by a fee schedule developed by the department that
28 reflects the direct cost of retrieving the data or study in the
29 requested form.))~~

30 (4) The department shall, in consultation and collaboration with
31 the federally recognized tribes, urban or other Indian health service
32 organizations, and the federal area Indian health service, design,
33 develop, and maintain an American Indian-specific health data,
34 statistics information system. The department rules regarding
35 confidentiality shall apply to safeguard the information from
36 inappropriate use or release.

37 (5) All persons subject to the data collection requirements of this
38 section shall comply with departmental requirements established by rule
39 in the acquisition of data.

1 NEW SECTION. **Sec. 18.** If any part of this act is found to be in
2 conflict with federal requirements that are a prescribed condition to
3 the allocation of federal funds to the state, the conflicting part of
4 this act is inoperative solely to the extent of the conflict and with
5 respect to the agencies directly affected, and this finding does not
6 affect the operation of the remainder of this act in its application to
7 the agencies concerned. Rules adopted under this act must meet federal
8 requirements that are a necessary condition to the receipt of federal
9 funds by the state.

10 NEW SECTION. **Sec. 19.** RCW 70.38.155, 70.38.156, 70.38.157,
11 70.38.914, 70.38.915, 70.38.916, 70.38.917, 70.38.918, and 70.38.919
12 are each decodified.

13 NEW SECTION. **Sec. 20.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 70.38.095 and 1979 ex.s. c 161 s 9; and

16 (2) RCW 70.170.080 and 1993 sp.s. c 24 s 925, 1991 sp.s. c 13 s 71,
17 & 1989 1st ex.s. c 9 s 508.

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

22 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 July 1, 1997.

26 NEW SECTION. **Sec. 23.** Sections 6 through 16 of this act
27 constitute a new chapter in Title 70 RCW.

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